

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1754

IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, *ex rel.*  
DAVID W. O'BROCTA,  
*Relator-Petitioner-Appellees,*  
vs.

COMMANDING OFFICER, United States Armed  
Forces, Examining and Entrance Station,  
R. F. FROEHLKE, as Secretary of the Army,  
and  
SELECTIVE SERVICE SYSTEM, Local Board No. 88,  
*Respondents-Appellants.*

**APPENDIX**

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK.

JOHN T. ELFVIN,  
United States Attorney,  
*Attorney for Appellants,*  
United States Court House,  
Buffalo, New York 14202.

KENNETH A. COHEN,  
Assistant United States Attorney,  
*of Counsel.*

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Docket Entries.

CIVIL DOCKET  
UNITED STATES DISTRICT COURT

Jury demand date:

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UNITED STATES OF AMERICA, *ex rel.* DAVID W.  
O'BROCTA,  
*Relator-Petitioner,*

vs.

COMMANDING OFFICER, United States Armed  
Forces, Examining and Entrance Station,

R. F. FROEHLKE, as Secretary of the Army,

and

SELECTIVE SERVICE SYSTEM, Local Board  
No. 88,

*Respondents.*

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Dec. 27, 1972, Filed Petition for Writ of Habeas Corpus.

Dec. 27, 1972, Filed Motion for Temporary Restraining Order.

Dec. 27, 1972, Filed Order that Commanding Officer of US Armed Forces Exam. & Entr. Station show cause why a Writ of Habeas Corpus should not issue, why petition should not thereafter be granted and petr. discharged, why temporary injunction should not issue etc. Curtin DJ (Service to be made by petr's. atty).

Jan. 19, 1973, Order to show cause. Adj. 2/2/73; 2/9/73; 3/2/73; Submitted.



*Docket Entries.*

Feb. 2, 1973, Filed Petitioner's Supplementary Affidavit.

Apr. 13, 1973, Oral argument on motion-adj. to 4/26/73; 4/30/73; 5/4/73.

May 4, 1973, Oral argument on motion. Stipulations to be filed by attys.

May 15, 1973, Filed Stipulation that letters and enclosures were written & mailed by Genesee Comm. Coll. to Local Board No. 88 on date shown & received by Board in due course of mail; that Govt. reserves its objections etc.

Mar. 27, 1974, Filed order granting writ of habeas corpus & respondents are ordered to discharge petitioner from their custody—Curtin, DJ Notice & copies to Joseph D. Bermingham, Jr. and U.S. Atty.

Mar. 27, 1974, JS 6 made.

May, 21 1974, Filed Respondents' Notice of Appeal (copy mailed to Mr. Bermingham and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to U.S. Atty.)



Petition for Writ of Habeas Corpus.  
UNITED STATES DISTRICT COURT  
Western District of New York

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UNITED STATES OF AMERICA, *ex rel.*  
DAVID W. O'BROCTA,  
*Relator-Petitioner,*

vs.

COMMANDING OFFICER United States Armed  
Forces Examining and Entrance Station,  
R. F. FROEHLKE, as Secretary of the Army,  
and  
SELECTIVE SERVICE SYSTEM Local,  
Board No. 88,

*Respondents.*

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To: Honorable United States District Court

The Petition of David W. O'Brocta, by his attorneys, Doyle,  
Diebold & Bermingham, respectfully shows the Court:

PETITION FOR WRIT OF HABEAS CORPUS

1. This Petition is presented for the purpose of obtaining a Writ of Habeas Corpus. This Court has jurisdiction of this application pursuant to the provisions of Title 28, United States Code, Section 2241.

PARTIES

2. The petitioner, David W. O'Brocta is a citizen of the United States whose permanent residence is 334 Niagara Falls



*Petition for Writ of Habeas Corpus.*

Boulevard, Tonawanda, New York, in the Western District of New York.

3. Petitioner is a registrant of the Selective Service System, Local Board No. 88, Federal Building, Room 16, 111 West Huron Street, Buffalo, New York, in the Western District of New York.

4. Respondent, Commanding Officer, Armed Forces Examining and Entrance Station, Federal Building, Room 1007, 111 West Huron Street, Buffalo, New York has custody over the person of the petitioner and is detaining him against his will and consent and without the jurisdiction to do so as will be set forth hereinafter and if not restrained today will issue an Order and cause petitioner to be transported to a military installation outside this Court's jurisdiction.

5. Respondent, R. F. Froehlke, as Secretary of the Army, is the constitutional organ of the President of the United States who is charged with the control and administration of United States Army Personnel and Affairs wherever situated or assigned.

6. Respondent, Selective Service System, Local Board No. 88, 111 West Huron Street, Buffalo, New York is the administrative organ through which the President of the United States exercises his executive authority to induct men into the Armed Forces of the United States.

**CLAIM**

7. Petitioner submitted to induction into the Armed Forces of the United States at the Armed Forces Examining and Entrance Station on December 27th, 1972 and is now being held at the station in the custody of the Respondent, Commanding Officer who has charge of the station.

*Petition for Writ of Habeas Corpus.*

8. The induction of petitioner was unlawful because the Order to Report for Induction (SS Form 252) pursuant to which petitioner was inducted, was issued in violation of the Military Selective Service Act as amended on September 28th, 1971 and the Rules, Regulations and Directions issued pursuant thereto all as more fully set forth in the following paragraphs:

9. Said Order is an illegal and arbitrary enforcement of the Military Selective Service Act as amended September 28th, 1971 in that Respondent, Local Board 88, failed to place petitioner in Class 2S, as is mandated by Selection 1622.25 of the Selective Service Regulations, 32 CFR and by Local Board Memorandum 43, issued July 26th, 1968 as amended November 10th, 1971, after petitioner met the requirements of the aforesaid regulations.

10. It is further submitted, with all respect, that your petitioner's induction and continued retention in the Armed Forces is improper in that your petitioner is afflicted with a chronic physical condition which makes him unacceptable for service in the Armed Forces. The criteria for acceptability being defined and mandated in Army Regulation 40-501, Chapter 1, *et seq*, and that consequently petitioner's continued retention is in violation of the aforesaid Army Regulations.

FACTS

11. Petitioner was born November 17th, 1950, and within five (5) days of the 18th anniversary of his birth, petitioner registered with the Selective Service System and was thereafter assigned Selective Service No. 30-88-50-3093.

12. On January 22nd, 1969, petitioner was classified 1-SH in order that he might complete his secondary school education.



*Petition for Writ of Habeas Corpus.*

13. In the month of September, 1969, petitioner matriculated at Genesee Community College, Batavia, New York to pursue a course of study leading to the degree of Associate in Applied Science in Business Administration.

14. In the fall semester of 1969, petitioner was required to take four (4) "Developmental" courses along with one (1) non-remedial three (3) credit hour course. Pursuant to college administration policy a credit earned from the "Developmental" courses could not be applied in meeting the sixty-seven (67) credit hour requirement for the Associate in Applied Science degree.

15. Petitioner was a full time Student at Genesee Community College from the fall of 1969 until his graduation in June, 1972, after he had accumulated a total of seventy (70) credit hours. Petitioner at no time during the course of his six (6) semesters at the college took fewer than twelve (12) credit hours per semester.

16. On October 21st, 1969 your petitioner was classified 2S by Respondent, Local Board No. 88.

17. On September 1st, 1970 your petitioner was classified 1A by Respondent, Local Board No. 88, notwithstanding the fact that your petitioner verily believes that he met all the requirements under the Selective Service Regulations in apprising the Respondent, Local Board No. 88, of petitioner's full time student status.

18. On or about October 6th, 1970 your petitioner met with Respondent, Local Board No. 88, in order to discuss with the board the petitioner's claim that he should be disqualified from service in the Armed Forces because of chronic breathing difficulties and frequent blackouts.

*Petition for Writ of Habeas Corpus.*

19. Petitioner submitted documentation of his physical disabilities to Respondent, Local Board No. 88, in the form of letters from Dr. Ronca, petitioner's family physician. Petitioner will furnish the Court with this documentation as soon as it is available.

19. Your petitioner has on several occasions received medical therapy for his breathing difficulties and blackouts. Nonetheless, petitioner remains afflicted with these incapacitating maladies.

20. On October 26th, 1970, petitioner submitted to an Armed Forces physical examination and was found acceptable for service in the Armed Forces.

21. On or about January 25th, 1971 petitioner received an Order to Report for Induction on February 5th, 1971.

22. On or about February 2nd, 1971 at the behest of the Honorable Henry P. Smith, petitioner's Congressman, Respondent, Local Board No. 88, placed petitioner in class 1SC.

23. On June 1st, 1971, petitioner was again classified 1A by Respondent, Local Board No. 88, notwithstanding petitioner's full time student status.

24. On or about October 8th, 1971, petitioner received an Order to Report for Induction on November 18th, 1971.

25. On receipt of the aforesaid Order, petitioner's father, Henry O'Brocta, asked Congressman Smith to investigate the propriety of this Order in light of the petitioner's full time student status.

26. Upon information and belief prior to November 18th, 1971, Henry O'Brocta was informed in a telephonic communication from William B. Lewis, Congressman Smith's



*Petition for Writ of Habeas Corpus.*

District Representative, that pursuant to the investigations of Congressman Smith's office, petitioner was to be given a deferment or postponement. Petitioner was unaware of the legal distinction between deferment and postponement at the time of the aforesaid communication. Petitioner is informed and verily believes that he was under no duty or compulsion to submit to induction on November 18th, 1971.

27. In December, 1971 petition requested Genesee Community College to inform Local Board No. 88 of petitioner's continuing full time student status and of his impending graduation in June, 1972.

28. On August 28th, 1972 petitioner was informed by Special Agent, Richard Stotts of the Federal Bureau of Investigation that a grievance had been filed against petitioner for failing to report for induction on November 18th, 1971.

29. On August 30th, 1972 petitioner met with Special Agent, Stotts and related petitioner's belief that the November 18th 1971 induction order had been deferred or postponed.

30. On August 31st, 1972 petitioner visited Respondent, Local Board No. 88 and told the Local Board clerk of petitioner's forthcoming matriculation in Millard Fillmore College, State University of New York as a full time third year student in a program leading to a Bachelor of Science degree in June, 1974.

31. Petitioner did in fact matriculate at Millard Fillmore College and is now a full time student.

32. On September 20th, 1972 petitioner received a notification to report for induction on October 1st, 1972.

33. Subsequent to the receipt of this notification petitioner's father conversed with Richard J. Arcara,

*Petition for Writ of Habeas Corpus.*

Assistant United States Attorney. Pursuant to the aforesaid conversation, petitioner was informed that the October 11th, 1972 induction date would be postponed.

34. On December 21st, 1972 petitioner received a notification that he is directed to report for induction on December 27th, 1972 at Room 1007, 111 West Huron Street, Buffalo, New York.

35. It is under the color of the aforesaid notification that petitioner has submitted to induction. Upon information and belief petitioner respectfully avers that there is no basis in fact for Respondent, Local Board No. 88, refusal to classify petitioner 2S.

36. Petitioner, for all the reasons hereinabove set forth, respectfully submits that the aforesaid actions of the respondents resulting in petitioner's present intention in the Armed Forces are illegal and unlawful and in violation of petitioner's right to due process of law guaranteed by the United States Constitution and that the aforesaid illegal and unlawful actions have resulted in petitioner's present illegal and unlawful restraint and custody in the United States Army and your petitioner is informed and verily believes that he is entitled to a discharge from his present custody in the United States Army.

WHEREFORE, your petitioner respectfully prays:

1. That under 28 USC, Section 2243, this Court issue an Order that the Respondents show cause why this Petition should not be granted and the petitioner discharged:

2. That this Court set out in the Order a return date of three (3) days or such further time as the Court may specify pursuant to the provisions of 28 USC, Section 2243.



*Petition for Writ of Habeas Corpus.*

3. That this Court set the matter down for hearing within five (5) days, or such further time as the Court may specify after the return.

4. That this Court order the respondents to release petitioner forthwith pending the final determination of this Petition or, in the alternative, that respondents not suffer petitioner to be removed from the jurisdiction of this Court pending the final determination of this Petition.

5. That this Court hear and determine the matter and upon final hearing issue an Order directing the respondents to discharge the petitioner from their custody and from the custody of the Armed Forces.

6. That your petitioner has such other and further relief as to the Court may seem just and proper in the premises.

s/ DAVID W. O'BROCTA.

State of New York, } ss.:  
County of Erie. }

David W. O'Brocta, being duly sworn, deposes and says:

That I am the petitioner herein, that I have read the foregoing Petition for a Writ of Habeas Corpus, that the allegations of fact therein are true except that when the allegations are made upon the basis of information and belief and as to those, I believe them to be true.

Sworn to before me this  
27th day of December, 1972.

Joseph D. Bermingham, Jr.,

*Notary Public,*

State of New York,

Qualified in Erie County,

My Commission Expires March 30, 19.....

**Supplementary Affidavit.**

State of New York, }  
County of Erie,     } ss.:  
City of Buffalo.    }

David W. O'Brocta, being duly sworn, deposes and says:

1. That he is the Petitioner in the above-entitled action and he makes this affidavit to supplement his original petition for a Writ of Habeas Corpus filed with the Clerk of the United States Court for the Western District of New York on December 27th, 1972.

2. That unless otherwise stated in the supplementary affidavit the Petitioner repeats and re-alleges each and every allegation of law and fact set forth in his original petition as if such allegations were fully set forth herein.

3. That on November 2nd, 1970, the Petitioner mailed a letter to Local Board No. 88 wherein he requested a change in his classification. It was Petitioner's wish and intention as embodied in this letter to seek all possible administrative remedies due him, although the Petitioner was unaware as to the exact nature of these remedies [RF 10 and Appendix C].

4. That upon information and belief, Respondent Board No. 88 failed to forward Petitioner's file to the Appeal Board although it was Petitioner's wish and intention as is apparent from a reading of Petitioner's wish and intention as is apparent from a reading of Petitioner's letter of November 2nd, 1970 that such appeal be perfected.

5. That upon information and belief the above said failure of the Local Board denied the Petitioner of his legal right to appeal under Selective Service Regulation 1626.2 32CFR.



*Supplementary Affidavit.*

6. That upon information and belief Petitioner's induction order issued on October 8th, 1971 was illegal and invalid because of the aforementioned unlawful denial of Petitioner's procedural rights.

7. That in paragraph number 15 of the petition for Writ of Habeas Corpus, the petition states that the Petitioner had accumulated 70 credit hours at the Genesee Community College. This is incorrect. The Petitioner completed 67 hours at Genesee Community College.

8. That in paragraphs 25 and 26 of the above-mentioned petition for Habeas Corpus Petitioner's father is apparently referred to as Henry O'Brocta. This is also incorrect. Petitioner's father's name is Louis O'Brocta.

9. That I am the Petitioner herein, that I have read the foregoing supplementary affidavit, that the allegations of fact herein are true except that when the allegations are made upon the basis of information and belief and as to those, I believe them to be true.

DAVID W. O'BROCTA.

Sworn to before me this

2nd day of February, 1973,

Joseph D. Bermingham, Jr.,

*Notary Public,*

State of New York,

Qualified in Erie County,

My Commission Expires March 30, 1974.

*Stipulation with Attached Letters and Enclosures.*

**Stipulation.**

The parties herein by their respective counsels STIPULATE as follows:

1. The letters and enclosures, copies of which are attached hereto, were written and mailed by Genesee Community College to Local Board No. 88 on the dates shown on each letter and in each case received by Local Board No. 88 in due course of mail.

2. The Government reserves its objections that the attached letters are neither relevant nor material nor competent except as to authenticity.

/s/ JOSEPH D. BERMINGHAM, JR.,  
*Attorney for Realtor-Petitioner.*

JOHN V. ELFIN,  
*United States Atty.,*  
By: /s/ Richard J. (Illegible),  
*Assistant United States Attorney*  
*for Respondents.*

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*Stipulation with Attached Letters and Enclosures.*

**Letter Dated November 6, 1970.**

**GENESEE COMMUNITY COLLEGE**

(Seal)

3837 West Main Street Road,

Batavia, New York 14020

Telephone: 716-343-0055

November 6, 1970

Office of the Director of Admissions

Local Board No. 88

Federal Building Rm. 208

121 Ellicott Street

Buffalo, New York 14203

Gentlemen:

Please be advised that Mr. Charles F. Zak was accepted at Genesee Community College on May 27, 1969. On September 3, 1969 Mr. Zak matriculated as a full-time student and is now pursuing a program toward a degree.

Charles is in a special category as a student at our institution. His admission to Genesee Community College was contingent upon completion of a one semester developmental or remedial program. The Developmental Program at Genesee Community College is part of an open-door admissions procedure at several community colleges in Western New York. This admission policy provides an opportunity for "high risk" students to have an opportunity to pursue a higher education for which they may not have qualified before.

Charles Zak has successfully completed the Developmental Program at Genesee Community College during the fall semester of 1969. He is presently enrolled as a full-time

*Stipulation with Attached Letters and Enclosures*

student in regular credit courses and is making satisfactory progress toward a degree in Business Administration.

It is important for draft boards to understand our College policy in determining a student's deferment. It is proper for a student to take a developmental program and still be making satisfactory progress toward his degree even though he may not be on the "regular" schedule for graduation as normally defined by some colleges—at the same time, Charles is making satisfactory progress toward graduation as defined by our open-door educational plan.

If you have any questions relative to Mr. Zak's status at Genesee Community College, please contact either of the undersigned.

Sincerely,

CHARLES P. CLAAR,  
*Coordinator of Intermediate  
Studies.*

MALCOLM T. WORMLEY,  
*Director of Admissions.*

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*Stipulation with Attached Letters and Enclosures.*

**Letter Dated November 17, 1970.**

(Seal) GENESEE COMMUNITY COLLEGE  
3837 West Main Street Road,  
Batavia, New York 14020  
Telephone: 716/343-0055

November 17, 1970

Office of the Dean of Students

Local Board No. 88  
Federal Building (Room 208)  
121 Ellicott Street  
Buffalo, New York 14203

Gentlemen:

In the past I have written several letters to you concerning the status of students who have been enrolled in our intermediate or Developmental Program. The open door admissions policy of this institution makes it possible for high-risk students to enroll at the college level.

For your information I am enclosing two documents which I believe will help clarify the status of students in this program. The first is a brochure describing the program and the second is a policy statement which was approved by our Board of Trustees in the spring of 1970.

If you have any questions concerning the program on these students please feel free to contact me.

Sincerely yours,

DAVID E. PETERS, Ph.D.,  
*Dean of Students.*

DEP:hm  
Enc. 2

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*Stipulation with Attached Letters and Enclosures.*

**Board of Trustees Statement on Implementation of the  
Full Opportunity Program at Genesee Community  
College.**

Since its inception, the College has followed the policy that any qualified (high school graduation or equivalency diploma) student living within the sponsorship area would be admitted to an appropriate program at the College as a full-time student. This policy reflects the philosophy of the Board of Trustees, and in our brief history the College has never rejected a single applicant from the sponsorship area.

The Board of Trustees of Genesee Community College has reconfirmed its commitment to provide a full educational opportunity to every applicant within the sponsorship area many times, both informally and at public board meetings. The Trustees, with full support from the administration and faculty, intend to continue to provide this full educational opportunity for all students within the sponsorship area.

1/25/71

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**Implementation of Full Opportunity Program.  
Board of Trustees Resolution.**

WHEREAS, The Board of Trustees of Genesee Community College has supported, and will continue to support an admissions policy that provides that any qualified (high school graduation or equivalency diploma) applicant who is a resident of Genesee County the (sponsor) will be accepted as a full-time student in an appropriate program, irrespective of the year he graduated from high school or completed his equivalency requirements, and



*Stipulation with Attached Letters and Enclosures.*

WHEREAS, This policy, which has been in force since the College's inception, will continue to be in force for the fall semester of 1970, as well as in the foreseeable future, and

WHEREAS, The Genesee County Legislature, the sponsor, has reflected its support of the Trustees' "full opportunity" policy by approving in full every budget which has been submitted to it—budgets which have reflected funds for programs of remediation, a good counseling ratio for students, and excellent faculty-student ratio to meet the needs of the wide variety of students that are served by the College, and

WHEREAS, The College has provided individual remedial courses, and during the last two years has provided a full semester long Developmental Studies Program for "high risk" students, the completion of which enables the student to move toward a Certificate or Associate Degree Program of his choice on a full-time basis, and

WHEREAS, The College is also in the process of examining the feasibility of extending its non-degree program of study in order to provide a large variety of choice to students who have shown, either by performance in a degree program and/or high school academic preparation, that a college-level associate degree program would not meet their needs, and

WHEREAS, The College supports the concept that students need sufficient time to explore appropriate career goals and provisions have been made whereby a student may change his major field of study—this change to be initiated by the student may change his major field of study—this change to be initiated by the student in conjunction with his faculty advisor and appropriate Division Chairman, and

WHEREAS, The College is committed to extending its programs to provide its students with basic educational skills

*Stipulation with Attached Letters and Enclosures.*

when needed, it is expanding its remediation reading clinic, as well as its Developmental Studies Program, and the number of remedial courses it offers to meet the needs of more students, with such remedial classes for the most part being limited to a maximum of 15 students, and

WHEREAS, The College is now in the process of formulating a total "team approach" with students in the Developmental Studies Program—an approach which will provide not only for small class instruction, but much individualized tutorial instruction, and

WHEREAS, There is a continuity of counseling of the individual students from high school through the College program, and surveys of students regarding desirable programs were completed at all schools in the sponsorship area, which high schools are visited by members of our Student Personnel Services staff at least twice annually, often more frequently, and

WHEREAS, The counselors from the area high schools are invited to the College to update them regarding new developments at the College, and to explore the changing needs of high school graduates, and this articulation continues as students are brought in individually for interviews and program planning prior to attending their first class at the College, and once in the College each student is assigned a faculty advisor and receives any additional help he may need in planning his goals from members of the Student Personnel Services staff, and

WHEREAS, The Faculty, Division Chairmen and the Dean of the College have formally in open faculty meetings indicated their support of the Board's "full opportunity" program, and



*Stipulation with Attached Letters and Enclosures.*

WHEREAS, A number of new faculty hired for the 1970-1971 academic year have been hired specifically to teach remedial work and were selected for their background, knowledge, and ability to work in this area, and

WHEREAS, Follow-up studies of the first students who completed the Developmental Studies Program, to ascertain their progress since then, indicates that the Program assures the student of a greater degree of success than a student who did not have this opportunity to participate in the Program, and

WHEREAS, Such studies indicate that the faculty and the College have been able to successfully implement such a Program, and furthermore that such a Program of "full opportunity" is one that is supported by the entire College community, and

WHEREAS, The College in the Fall Semester of 1970 will be operating at approximately 150% of the State University's maximum space utilization base, with the College day running from 7:00 a.m. to 10:00 p.m., plus Saturday classes, and classes are held not only during the two regular semesters, but also during the three-week intersession between semesters, as well as summer classes that run during the entire summer vacation period to maximize the use of our facility, and

WHEREAS, The College was established with the concept of open door admissions, and the expectation of a heterogeneous student body, its admissions practices, academic practices, and counseling practices have been geared to this student population—one that shows almost 70% of each incoming student class graduated in the lower 50% of their high school graduating classes, and

WHEREAS, In accordance with the State University requirements, the President of Genesee Community College

*Stipulation with Attached Letters and Enclosures.*

will file quarterly progress reports on the implementation of the "full opportunity" program, the first report due on or before December 31, 1970,

THEREFORE BE IT

RESOLVED: That the Board of Trustees of Genesee Community College fully supports and will fully implement the provisions of the full opportunity program effective the fall semester of 1970.

Adopted June 8, 1970

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**Genesee Community College Folder.**

**GENESEE COMMUNITY COLLEGE**

**An Opportunity for Everyone!!**

So you had a lousy high school record. You can't get into college? Why? Did you goof off or select the wrong curriculum? Were you turned off by the system or just developed slowly? Whatever the reason may be, there is still an opportunity for you to attend college.

Intermediate Studies at  
Genesee Community College  
Provides the Opportunity for  
Higher Education

Genesee Community College  
Batavia, New York 14020

Genesee Community College can admit you to a one semester program designed to help you overcome deficiencies



*Stipulation with Attached Letters and Enclosures.*

in math, English, and reading which may block your attempts at success in college.

The Intermediate Studies program of Genesee Community College provides an opportunity for students of low academic achievement to experience the social, cultural and intellectual atmosphere of the community college. The Intermediate Studies program advances individual growth and assists students in establishing realistic goals which may guide them through a rewarding educational experience. The program exposes the student, who may not otherwise have had the opportunity, to higher education and achievement. It provides the student with the necessary remedial courses, counseling, and guidance necessary for him to function satisfactorily at the college level.

The following are the primary objectives of the intermediate Studies Program:

1. To establish a close relationship between student and instructor for the purpose of providing special assistance both in and out of the classroom.
2. To examine the study habits and attitudes toward study with each student in order to evaluate and improve them in a positive manner and to develop effective attitudes and practices toward study.
3. To realistically examine individual needs in the setting of achievable goals.
4. To familiarize students with the expectations of the college and prepare them to meet these expectations.
5. To create a social awareness by broadening their social and intellectual experiences through group interaction.

*Stipulation with Attached Letters and Enclosures.*

6. To provide the motivation necessary for the student to raise himself to that level of proficiency which would increase his chances of academic success in college.

## ACADEMIC INSTRUCTION

The Intermediate Studies program provides five development remedial courses which give the student the opportunity to develop the skills which he is lacking. These are all non-credit courses in which the student's performance is evaluated by an "S" or "U", indicating "satisfactory" or "unsatisfactory". Credit courses are substituted when a student demonstrates proficiency in specific subject areas.

The following are course descriptions and objectives of the courses as provided by the instructors:

### English 090

English 090 is for those students who need help in developing their English skills in order to successfully compete in a regular English program. What English 090 should be is a course geared to exposition that will:

1. (a) Show students how to read with understanding.  
(b) Show students how to analyze and evaluate what they have read.
2. Show students how to effectively communicate their findings.
3. Teach students to identify and learn to correct their own patterns of errors in spelling and sentence structure.



*Stipulation with Attached Letters and Enclosures.*

4. Show students how to write letters of application which do reflect unfavorably on their requests or training.

5. Help students to assume responsibility to complete long-range assignments which require several individual steps over a period of weeks without having to be coaxed, coerced or even reminded.

**Reading 090**

This course utilized both the lecture and laboratory methods of instruction to improve the student's reading comprehension and speed. Students in this course are also given an opportunity to develop proper study habits.

**Math 090**

By the time the student has completed math 090, he should be able to demonstrate an understanding of the manipulative skills of algebra. He should be able to:

1. Perform basic arithmetic operations with signed numbers.
2. Solve linear and quadratic equations and inequalities.
3. Perform the basic arithmetic operations with algebraic expressions.
4. Show the necessary skills in performing basic manipulations with rational and irrational expressions.
5. Graph linear functions and relations.
6. Show an understanding of the idea of a set and set operations.
7. Show an understanding of the significance of postulates definitions and theorems.

*Stipulation with Attached Letters and Enclosures.*

#### **Orientation 090**

In the Orientation class, individual and group counseling is used to develop the interest and motivation necessary for the student to be successful in college. A variety of group techniques are used to facilitate achievement and develop the individual potential of each student. Emphasis is placed on the development of effective study habits and attitudes toward study. Students are encouraged to focus on realistic goals and to plan how these goals are to be achieved.

#### **Chemistry 090**

This course consists of the basic principles and laboratory techniques of chemistry. It is designed to provide the background necessary for general chemistry and general biology. Three lecture hours and three laboratory hours.

Students in the Intermediate Studies program take English 090, Math 090, Reading 090, Orientation and may take a fifth course if they desire. Upon successful completion of the Intermediate Studies program students may proceed into a regular college curriculum. The Intermediate Studies Program is available during the Fall, Spring and Summer semesters. Additional information may be obtained by contacting:

Coordinator of Intermediate Studies  
Genesee Community College  
Batavia, New York 14020

For Further Information  
Dial 343-0055  
Batavia, New York



### Decision and Order.

#### Appearances:

Doyle, Diebold & Bermingham (Joseph D. Bermingham, Jr., of Counsel), Buffalo, New York, for Relator-Petitioner.

John T. Elfvin, United States Attorney (Richard J. Arcara, of Counsel), Buffalo, New York, for Respondents.

Alleging the illegality of his detention by respondent Commanding Officer, United States Armed Forces Examining and Entrance Station, following his induction into the Armed Forces, petitioner seeks a writ of *habeas corpus* pursuant to 28 U.S.C. § 2241.

The following facts are revealed by an examination of petitioner's Selective Service file. Petitioner registered with respondent Selective Service System Local Board No. 88 on November 22, 1968. On December 12, 1968, the Board sent him SSS Form No. 100, Classification Questionnaire, and on December 23, 1968 it received the completed questionnaire, which indicated that petitioner would graduate from high school in June 1969. On January 21, 1969 the Board placed petitioner in Class I-SH.

On June 25, 1969 the Board sent petitioner SSS Form No. 127, Current Information Questionnaire, and on July 9, 1969 it received the completed form, which indicated that the petitioner would be a full-time student in the fall at Genesee Community College. On September 8, 1969 the Board received from the registrar of Genesee Community College SSS Form No. 109, Student Certificate, indicating that petitioner was satisfactorily pursuing a full-time course of instruction while enrolled in the first year class at the college and was expected to receive a degree in June 1971. On September 19, 1969 the Board sent petitioner another Current Information Questionnaire and, on September 30, 1969, it

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received the completed form, which indicated that petitioner was enrolled at Genesee Community College and expected to complete degree requirements in June 1972. On October 21, 1969 the Board placed petitioner in Class II-S.

On September 1, 1970 the Board placed petitioner in Class I-A. On September 23, 1970 it received from the registrar of Genesee Community College a Student Certificate indicating that petitioner was satisfactorily pursuing a full-time course of instruction while enrolled in a second year class at the college, and was expected to receive a degree on or about January 10, 1972. On October 6, 1970 the Board again placed petitioner in Class I-A and sent petitioner SSS Form No. 217, Advice of Right to Personal Appearance and Appeal. On October 26, 1970 the Board sent petitioner SSS Form No. 223, Order to Report for Armed Forces Physical Examination, setting November 13, 1970 for the examination. On November 6, 1970 the Board received from petitioner the following letter dated November 2, 1970:

I enrolled in Genesee Community College, Batavia, New York, starting as a full time student on September 1, 1969, pursuing a curriculum in Business Administration. Certain courses were required by the College which I did not receive when at Cardinal O'Hara High School.

The first three months from September 1, 1969, to December 31, 1969, were spent taking preparatory courses. I am currently a full time student at Genesee Community College and expect to graduate in December 1971, with an AAS Degree in Business Administration. I then plan to further my studies on January 1972 if possible, at Tri-State College leading to a Bachelor's Degree in Business Administration in December 1973.

During my attendance at Cardinal O'Hara I did not participate in sport activities because I blacked out a number



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of times when engaged in sports requiring a lot of running or strenuous activity. Likewise, at Genesee College I have not taken the Physical Education Course for this same reason. A medical certificate from Dr. Ronca has previously been submitted to the Local Board No. 88. If this is not in your file, please let me know and I will get another medical status report and submit same to the Board.

On the basis of the aforementioned facts I wonder if there is a possibility of a change in my draft classification from my present I-A. I recently received a notice to report for the Armed Forces Physical Examination on November 13, 1970.

If my present status remains the same I would appreciate a personal appearance and consultation with Local Board No. 88.

On the portion of the Classification Questionnaire denoted Minutes of Actions by Local Board and Appeal Board and on Appeal to the President, receipt of the letter was indicated by the following notation: "11-6-70 Req. for pers. app. & app. recd." On November 27, 1970 the Board received D.D. Form 62, Statement of Acceptability, indicating that on November 13, 1970 petitioner had been found fully acceptable for induction into the Armed Services. On December 11, 1970 the Board sent petitioner Form LO-46, setting December 22, 1970 for an appearance by him before the Board. The appearance took place as scheduled. A NY Form 7, Summary of Appearance Before Local Board, dated December 24, 1970, indicated that petitioner's classification was not reopened following the appearance and that his classification in Class I-A was continued.

On January 25, 1971 the Board sent petitioner SSS Form No. 252, Order to Report for Induction, setting February 5,

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1971 for his induction. On the same date it sent him also SSS Form No. 264, Postponement of Induction, postponing his induction date on the ground that petitioner qualified for classification in Class I-SC. On February 2, 1971 the Board so classified petitioner. On June 1, 1971 it again placed him in Class I-A and, on October 8, 1971, issued him an Order to Report for Induction. Petitioner failed to report for induction on the scheduled date, November 18, 1971.

Nothing further occurred until August 31, 1972 when petitioner visited the Board's office and filled out a SSS Form No. 119, Report of Information, indicating that he was "[c]urrently enrolled as a full-time student at University of Buffalo and request that I may receive a student deferment as I have been enrolled in school since Sept. of 1969." On September 20, 1972 the Board, by letter, directed petitioner to report for induction on October 11, 1972. On October 2, 1972 the Board received from the Office of Admissions and Records at the State University of New York at Buffalo a Student Certificate indicating that petitioner was enrolled in the third year class at the University and was expected to receive a degree in June 1974. Accompanying the certificate was a letter indicating that petitioner was taking three courses totalling twelve hours of credit. Notified of these facts, the United States Attorney, to whom petitioner's case had been referred for prosecution, requested on October 26, 1972 that petitioner's induction be postponed until the end of the semester. Apparently the postponement was granted, although a Postponement of Induction was not sent and petitioner was not placed in Class I-SC. On December 18, 1972 the Board, by letter, again ordered petitioner to report for induction on December 27, 1972. On the latter date petitioner submitted to induction and filed the instant petitioner.



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The initial question in this case is whether petitioner's letter of November 2, 1970 should have been construed as a notice of appeal to the appeal board of his placement in Class I-A on October 6, 1970.

On May 29, 1973 the court wrote counsel asking for a clarification of their position on this question. In response, the government on June 21, 1973 sent a memorandum to the court stating:

The Government concedes that the petitioner's letter dated November 2, 1970, must be construed as a notice of appeal based upon the letter and the notations appearing on the portion of the "Classification Questionnaire" denoted "Minutes of Actions by Local Board and Appeal Board and on Appeal to the President."

. . . it follows that the order to report for induction mailed to the petitioner on January 25, 1971, to report on February 5, 1971, was therefore invalid.

Although originally the government strenuously urged that the letter of petitioner was not a notice of appeal, its present position that the letter is a notice of appeal is well founded. See 32 C.F.R. § 1626.11(a); *Chih Chung Tung v. United States*, 142 F.2d 919, 921 (1st Cir. 1944); *Cox v. Wiedemeyer*, 192 F.2d 920, 923 (9th Cir. 1951). See also *Simmons v. United States*, 348 U.S. 397, 404 n.5 (1955). Petitioner's letter of November 2, 1970 will be considered a notice of appeal. However, no action was taken by the appeal board on petitioner's file.

Pursuant to 32 C.F.R. § 1626.41, an order to report for induction which is issued during the period an appeal is pending to the appeal board shall be ineffective and shall be cancelled by the local board. *United States v. Olkowski*, 248 F.Supp. 660 (W.D. Wisc. 1965); *United States v. Madrid*, 314 F. Supp. 17



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(W.D. Tex. 1968). In *United States v. Madrid, supra*, the court addressed the issue of whether the local board's reclassification and the attendant renewal of the registrant's appeal rights cured the board's previous error in not processing the registrant's appeal:

Certainly, Section 1625.13 of the regulations does not require a registrant to take successive appeals from every new classification order entered by the local board while an appeal for a particular classification is still pending, unless he has in some manner chosen to waive or abandon his appeal. Such is not the case here. On the contrary, defendant has at all pertinent times insisted that he is a conscientious objector entitled to the 1-0 classification.

314 F. Supp. at 19.

In the *Madrid* case, because petitioner's classification was never reviewed by the appeals board, his appeal was still pending and, under the regulations, the order to report for induction was invalid.

Petitioner's failure to appeal his later classification cannot fairly be construed as a waiver of the rights asserted in petitioner's letter of November 2, 1970. Indeed, it is impossible to speculate on what action petitioner might have taken if he had been clearly informed that his appeal was not completely processed and there was a review board available to him which had not yet considered his II-S request. Petitioner's Selective Service file indicates that he consistently maintained he was entitled to a II-S classification. In spite of his filing a notice of appeal, that position was never considered by the appeal board.

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The case of *United States v. Lyzun*, 444 F.2d 1043 (7th Cir. 1971), cited by the government, is not controlling here. The writ of *habeas corpus* is granted. Respondents are ordered to discharge petitioner from their custody.

So ordered.

John T. CURTIN,  
*United States District Judge.*

Dated: March 27, 1974.



## Transcript of Testimony, April 30, 1973.

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NEW YORK

3 \*\*\*\*\*

4 UNITED STATES OF AMERICA, ex rel  
5 DAVID W. O'BROCTA,

6 Relator-Petitioner,

7 -v-

CIVIL DOCKET  
NO. 1972-663

8 COMMANDING OFFICER  
9 United States Armed Forces  
10 Examining and Entrance Station

11 R.F. FROEHLKE, As Secretary of the  
12 Army,

13 and

14 SELECTIVE SERVICE SYSTEM  
15 Local Board #88,

16 Respondents.

17 \*\*\*\*\*

18 Proceedings held before the Hon. John T.

19 Curtin, United States District Judge, in Part II, United States  
20 Court House, Buffalo, New York, commencing on April 30, 1973.

21 APPEARANCES:

JOSEPH D. BERMINGHAM, JR., Esq., Attorney  
for Relator-Petitioner.

22 JOHN T. ELFIN, United States Attorney, by  
23 RICHARD J. ARCARA, Assistant United States  
24 Attorney, Attorney for Respondents.





1 MR. BERMINGHAM:

We are here, your Honor, in the matter  
2 of United States ex rel David O'Brocta, vs.  
3 Commanding Officer, United States Armed  
4 Forces Examining and Entrance Station, et  
5 al, a writ of habeas corpus. The purpose  
6 today is to proffer the testimony of Charles  
7 Claar from the Genesee Community College.

8 THE COURT:

Can we consider this as the hearing  
9 date for this?

10 MR. BERMINGHAM:

Yes, sir

11 THE COURT:

Okay. If there should be something  
12 coming up - - -

13 MR. BERMINGHAM:

Something just did come up this after-  
14 noon which I will call to your Honor's  
15 attention. Which I was talking to Mr.  
16 Claar he advised me that it was his under-  
17 standing and his recollection that letters  
18 had gone out to the various draft boards  
19 advising them of the developmental program  
20 at Genesee Community College similar to  
21 programs at other community type colleges  
22 and its effect upon the entrance. Immed-  
23 iately after that I checked with the school  
24 and found out they did have their copies  
25 of correspondence. On a quick check they

1 found a letter addressed to Board 88 stating  
2 the general policy of the school in this  
3 regard and that letter was dated November  
4 15, 1970, which is, of course, the critical  
5 time involved in this litigation. That  
6 letter had reference to other letters  
7 previously written so actually the Govern-  
8 ment should be in a position simply to  
9 produce that.

10 THE COURT:

I don't know, Mr. Bermingham, it might  
11 be easier for the school to find copies  
12 than the Board to find the original but,  
13 of course, you can serve a notice, but would  
14 you have the Board search for that?

15 MR. ARCARA:

I submit to the Court I will make a  
16 search and find a copy of the letter but I  
17 state on the record I object to this testi-  
18 mony and I would like to have a continuing  
19 objection.

20 THE COURT:

Let us take two things. We have the  
21 testimony and we also have the letters or  
22 notice from the Board, right?

23 MR. ARCARA:

Yes, sir.

24 THE COURT:

I know you object to the testimony and  
25 maybe we can take it. I haven't seen the



C. Claar, for Relator-Petitioner, Direct.

4

1 letters and maybe we ought to take that  
2 question up when we get the letters. Why  
3 not have Mr. Claar since he is here. We  
4 will consider this, - what I want to do to  
5 clear my slate, this is on the hearing in  
6 the matter of United States, ex rel David  
7 W. O'Brocta, Civil 1972-662.

8  
9 C H A R L E S C L A A R (261 Ridgewood Drive, Snyder, New  
10 York), a witness called by and behalf of the Relator-Petitioner,  
11 having been first duly sworn, was examined and testified as  
12 follows:

13  
14 THE COURT:

It is understood, Mr. Arcara, that this  
15 testimony is heard over your objection. I  
16 am not going to rule on it today so if you  
17 want to ask any questions on cross examina-  
18 tion you may. I will then after looking at  
19 the correspondence and considering the whole  
20 file determine whether or not the testimony  
21 is admissable.

22 MR. ARCARA:

Thank you, your Honor.

23  
24 DIRECT EXAMINATION BY MR. BIRMINGHAM:

25 Q Mr. Claar, where are you employed?



1 A Genesee Community College.

2 Q And were you employed at Genesee Community College in  
3 September of 1969?

4 A Yes, sir, I was.

5 Q And in what capacity, sir?

6 A I was coordinator of the Developmental Studies Program.

7 Q All right. In that capacity did you come to know the  
8 relator here, David W. O'Brocta?

9 A Yes, I did.

10 Q All right, and do you know whether or not he had matricu-  
11 lated as a student at Genesee Community College?

12 A Yes, he has matriculated.

13 Q In what program, sir?

14 A He was in Business Administration.

15 Q All right. Did you have a program, - you said you were  
16 in charge of developmental studies?

17 A Yes.

18 Q What are they?

19 A Development Studies Program is a program for high risk  
20 students who come to the college in need of - - -

21 THE COURT: High risk?

22 THE WITNESS: High risk.

23 THE COURT: What do you mean by high risk?

24 THE WITNESS: Well, high risk student is a student  
25 based on highschool records his chances of

1 successfully completing college are pretty  
2 marginal a student is admitted to this  
3 program. It is a non-credit program. At  
4 that time it was a non-credit program  
5 involving the development of writing skills,  
6 math skills, reading skills and a college  
7 orientation class to help develop study  
8 skills for successful college.

9 BY MR. BIRMINGHAM:

10 Q Was David O'Brocta such a high risk student?

11 A Yes, sir, he was.

12 Q Was he enrolled in the developmental courses?

13 A Yes, sir, he was.

14 Q He was a candidate for a degree of Associate in Applied  
15 Science and Business Administration, is that correct, sir?

16 A Yes.

17 Q And any high risk student who matriculated into that  
18 program, what would be the duration of his expected  
19 course of study?

20 A It would take a student five semesters to successfully  
21 complete the two year degree.

22 Q And that would be true not only of the petitioner Mr.  
23 O'Brocta but any student similarly situated?

24 A Any student at that time in the program would have taken  
25 five semesters.



1 THE COURT: If he wasn't in this high risk program  
2 it would have taken four?

3 THE WITNESS: Four, yes, sir.

4 BY MR. BIRMINGHAM:

5 Q Now, having been categorized by the school as a high risk  
6 student was he eligible to take credit bearing courses  
7 without first completing the developmental courses?

8 A No, he was not.

9 MR. BIRMINGHAM: You may ask.

10 MR. ARCARA: Your Honor, may I have the registrant's  
11 Selective Service file?

12 THE COURT: You say he would have to finish five  
13 semesters before he could take any credit  
14 courses?

15 THE WITNESS: No. He had to finish the non-credit  
16 sequence which was one semester in length  
17 before he could enroll full time in credit  
18 courses.

19 BY MR. BIRMINGHAM:

20 Q One other question, if your Honor please. Was he when  
21 he was taking the developmental courses a full time  
22 student at the college?

23 A Yes, he was a full time student at the college.  
24  
25



1 CROSS EXAMINATION BY MR. ARCARA:

2 Q Sir, I am showing you part of Mr. O'Brocta's Selective  
3 Service file, a form which is entitled Student Certificate  
4 with an Item 4 in the upper right-hand corner, sir.  
5 Looking at that particular document do you recognize this,  
6 sir?

7 A I am not certain whether, - I probably filled one out some-  
8 time. This particular document or one like it?

9 Q A form like it, sir?

10 A I probably filled one out similar to it myself.

11 Q Looking at the lower right-hand corner, Paragraph 8, under  
12 the title Certification does this indicate this document  
13 came from Genesee Community College?

14 A Yes.

15 Q And this is the student certificate which was sent to Mr.  
16 O'Brocta's Draft Board, is that correct?

17 A I assume so. It says so at the bottom, yes.

18 Q All right. That would be Local Board No. 88?

19 A Yes.

20 Q And what date, sir, was that completed?

21 MR. BIRMINGHAM: Well, your Honor, if that is in evidence  
22 it speaks for itself. This witness doesn't  
23 have any knowledge of it. He has already  
24 testified; I don't see the point.

25 MR. ARCARA: This was a document, your Honor, prepared

1 by Genesee Community College relative  
2 to the status which Mr. O'Brocta was - - -  
3 THE COURT: Are you trying to bring something extra  
4 out through Mr. Claar?

5 MR. ARCARA: Yes, sir. Is there anything on that  
6 particular form, sir, to indicate that Mr.  
7 O'Brocta was a high risk student and re-  
8 quired five rather than four semesters?

9 THE WITNESS: I don't see any.

10 BY MR. ARCARA:

11 Q Isn't it a fact, sir, that that document indicates Mr.  
12 O'Brocta is a four year student?

13 A The document may indicate that but that was not the case.

14 Q Are you aware of your personal knowledge, sir, whether or  
15 not Genesee Community College advised Local Board 88 that  
16 Mr. O'Brocta was in a different course of study other than  
17 as indicated on that form?

18 A Not that I am aware of they didn't.

19 Q So as far as you know, would it be safe to say that the  
20 draft Board at this time knew Mr. O'Brocta was pursuing a  
21 two year course of study?

22 MR. HERMINGHAM: Objection. He is now asking him what the  
23 knowledge of the Draft Board is which is  
24 obviously beyond Mr. Claar's knowledge.

25 THE COURT: As far as the document, that is what the



C. Claar, for Relator-Petitioner, Cross.

document shows?

MR. BIRMINGHAM:

The document shows that, sure.

MR. ARCARA:

There is no way the Draft Board would know from looking at that document that they would be able to appreciate the fact that Mr. O'Brocta was undergoing five year semester, - five semester.

THE COURT:

That is argumentative. Whether the Draft Board would know it or not, that is for me to decide, not Mr. Claar.

BY MR. ARCARA:

Q Do you know when in fact Mr. O'Brocta did graduate.

THE COURT:

What do you mean "graduate"?

MR. ARCARA:

From Genesee Community College. Did he complete his studies in five semesters?

MR. BIRMINGHAM:

Well, I think that is now beyond the scope of the examination, your Honor.

MR. ARCARA:

The records show, your Honor, I believe the file shows it was three years, six semesters.

THE COURT:

He finished in six semesters?

MR. ARCARA:

Yes, sir.

THE COURT:

Is that in the Draft Board records?

MR. ARCARA:

It is in the Draft Board records. I have no further questions.



- 1 THE COURT: Does it explain why?
- 2 MR. ARCARA: No, your Honor. The Draft Board, as
- 3 I understand the file indicated Mr. O'Brocta
- 4 was pursuing a two year course of study.
- 5 That is all the Draft Board had at the time.
- 6 THE COURT: Are there any other documents you want
- 7 to show to Mr. Claar while he is here, Mr.
- 8 Bermingham, - Draft Board documents or other
- 9 documents?
- 10 MR. BERMINGHAM: I don't know if it is Mr. Claar I want
- 11 to show them to, your Honor, but there are
- 12 certain other documents.
- 13 THE COURT: Mr. Claar, is Genesee in Batavia?
- 14 THE WITNESS: Yes, sir.
- 15 THE COURT: Where is it, on the outskirts?
- 16 THE WITNESS: Yes. It is on the north and east side
- 17 of the City of Batavia.
- 18 THE COURT: Are all your students from Genesee County?
- 19 THE WITNESS: No, sir. About 50 per cent of our
- 20 students are from Erie County.
- 21 THE COURT: You get some from the Rochester area and
- 22 Niagara Falls?
- 23 THE WITNESS: Some but not nearly as many as from Erie.
- 24 MR. BERMINGHAM: Do you have the file, - the original
- 25 exhibit?

1 THE COURT: They are all commuters?

2 THE WITNESS: Yes, sir.

3 THE COURT: You do not have any dorms there?

4 THE WITNESS: No, sir.

5  
6 REDIRECT EXAMINATION BY MR. BIRMINGHAM:

7 Q Well, Mr. Claar, Form SSS 109 which is marked number 7 in  
8 the Selective Service file is the same form as you just  
9 looked at with Mr. Arcara, is that correct, sir?

10 A Yes, sir.

11 Q Okay, and in Part 3 of this particular form which is dated  
12 9-18 1970, it indicates the expectation of a degree is on  
13 January 10 of 1972, is that correct?

14 A That is correct, sir.

15 Q Now, you personally knew Mr. O'Brocta when he entered the  
16 school, is that correct?

17 A Yes, sir.

18 Q And you knew him to be in the developmental program because  
19 you counselled him at that time in that program, is that  
20 right?

21 A Yes, sir.

22 Q And so is the information which is contained on this Form  
23 Number 7, would that have been correct as of September of  
24 1969?

25 A Yes, sir.



1 Q This is the proper information, is that right?

2 THE COURT: This is an item in the Board file?

3 MR. BERMINGHAM: Item 7 in the Board file, your Honor.

4 Thank you.

5 MR. ARCARA: But the Board didn't have that informa-  
6 tion before them in September 1969, did  
7 they, sir?

8 THE WITNESS: I have no way of knowing whether they  
9 had that or not.

10 MR. ARCARA: May I have that document, Mr. Bermingham?

11

12 RE-CROSS EXAMINATION BY MR. ARCARA:

13 Q Referring to the document, the document Mr. Bermingham  
14 showed you, which is entitled Student Certificate, Item  
15 No. 7 in the right-hand corner, does it indicate in that  
16 document, sir, that Mr. O'Brocta was a high risk student?

17 A No, sir.

18 Q It doesn't show anything except his expected date of  
19 graduation was January 1972?

20 A That's correct.

21 Q Which was some eight months after the original student  
22 certificate which was submitted the year prior?

23 A Yes, sir.

24 THE COURT: Thank you, Mr. Claar.

25 MR. BERMINGHAM: I would like in this connection to call

1 to your attention document number 11 in the  
2 Selective Service file which is a letter  
3 from the Petitioner to the Draft Board, -  
4 wait a minute, - I am sorry, 11 is the  
5 wrong one, - 10, dated November 2 of 1970  
6 in which he does state that he was involved  
7 in these developmental course and, of  
8 course, Mr. Arcara will - - -

9 THE COURT: When was the crucial classification made?

10 MR. ARCARA: September 1970, your Honor.

11 THE COURT: September 1970, so this is - - -

12 MR. BERMINGHAM: That is the classification from which he  
13 appealed in November 1970, which appeal was  
14 never processed.

15 MR. ARCARA: That is purely an argument, your Honor.  
16 There is nothing in the file to indicate  
17 this man ever appealed his classification.

18 THE COURT: Wouldn't the letter be notice?

19 MR. ARCARA: He indicated in the letter of November  
20 2, your Honor, that he requested a personal  
21 appearance, a consultation based on this  
22 letter which is item 10 in the file. Mr.  
23 O'Brocta did in fact receive a personal  
24 appearance on December 22, 1970.

25 THE COURT: December 22?



1 MR. ARCARA:

Yes, your Honor. Following this  
2 personal appearance Mr. O'Brocta was then  
3 notified that he had a right to appeal,  
4 even notwithstanding that he had just been  
5 interviewed on December 22. Mr. O'Brocta  
6 did not appeal.

7 THE COURT:

Before we listen to this argument let's  
8 see if we can find these letters. That may  
9 change the picture here drastically, Mr.  
10 Arcara.

11 MR. ARCARA:

Oh, no, your Honor.

12 THE COURT:

If the Board had letters from the school  
13 saying they had this developmental program, -  
14 I don't know what the letters say and I  
15 think we will have to wait and see what the  
16 letters say.

17 MR. ARCARA:

Your Honor, if the letters do say they  
18 have such a program how would it affect  
19 this man because they were never notified  
20 he was in this program.

21 THE COURT:

Let us wait and see what the letters say.  
22 It may say "most of our students are" or  
23 "some of our students are", and then they  
24 had the letter from O'Brocta saying he was.  
25 Let's wait for the letter. Can we adjourn

1 this a week from Friday?

2 MR. ARCARA: Your Honor, I would like to move this on.

3 THE COURT: All right; when you get the letter.

4 MR. ARCARA: I can have it tomorrow if we have such  
5 a letter.

6 MR. BERMINGHAM: If he can't, I am sure I can.

7 THE COURT: Mr. Bermingham, how long will it take  
8 you to get the letter or copies of the  
9 letters?

10 MR. BERMINGHAM: Well, if we can simply make copies of  
11 their copies and bring them up here I can  
12 do that very expeditiously.

13 THE COURT: All right. That is all we need.

14 MR. BERMINGHAM: I don't have to drag somebody up from  
15 the school?

16 MR. ARCARA: No.

17 THE COURT: Let us adjourn it to Friday at 11. That  
18 will expedite it, Mr. Arcara.

19 MR. BERMINGHAM: You are going to look at the file and  
20 let me know by tomorrow?

21 THE COURT: I have the Selective Service file.

22 MR. BERMINGHAM: Thank you, your Honor.

23 \* \* \* \* \*



Proceedings, May 4, 1973.

1 PROCEEDINGS: May 4, 1973.

2 APPEARANCES: As before noted.

3  
4 MR. ARCARA: Your Honor, the next matter, Civil 1972-  
5 663, O'Brocta against Commanding Officer.  
6 Mr. Bermingham is here.

7 THE COURT: Mr. Arcara, Mr. Bermingham. You have  
8 received the letters Mr. Bermingham gathered  
9 together from Genesee Community College?

10 MR. ARCARA: That is correct.

11 THE COURT: What is next? Is it all submitted?

12 MR. ARCARA: Yes, your Honor.

13 THE COURT: And the letters may become part of the  
14 record?

15 MR. ARCARA: I object to that, your Honor.

16 THE COURT: What is your position?

17 MR. ARCARA: Even if they did become part of the  
18 record I believe the record is quite clear  
19 even if the Draft Board had the information  
20 that he was under the developmental program  
21 he still wouldn't be acceptable.

22 THE COURT: Do you agree that the Board received  
23 the letters?

24 MR. ARCARA: Yes, your Honor, I agree this letter was  
25 received.

## Certificate.

1 THE COURT:

So we have it clear can you have a  
written stipulation, - will you prepare the  
proper stipulation, Mr. Bermingham?

4 MR. BERMINGHAM:

Yes, your Honor.

5 THE COURT:

So we make it part of the trial record  
in this case that letters were sent and  
received by the Board. Any legal conclusion  
to be drawn from that, whether or not they  
will be received in evidence or what effect  
they will have if received in evidence is  
another matter, but I do think we should  
have for the record your position whether  
or not they were received because if you  
object to that then we will have to have  
testimony taken but if the man from the  
college says "we sent the letters in the  
regular course of business" we would follow  
the usual presumption that the letters were  
received.

20 MR. ARCARA:

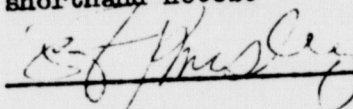
We will stipulate to that.

21 THE COURT:

Prepare the stipulation.

\* \* \* \* \*

I hereby certify that the foregoing is a  
correct and accurate transcription of my  
shorthand notes.



H. T. NOEL  
OFFICIAL REPORTER, U.S. DISTRICT COURT





NOV 22 1968

NAME CIBROCTA DAVID WAYNE  
(Last) (First) (Middle Initial)  
ADDRESS 334 NIAGARA FALLS BLVD.  
(Number and Street or R.F.D. No.)

TONAWANDA ERIE NY 14223

SS # II CARD NLD: 12.10.68

[illegible]

(Stamp of Local Board)

(Emergency Decentralization Area)



## SELECTIVE SERVICE SYSTEM

Form approved  
Budget Bureau No. 33-1 102.13.

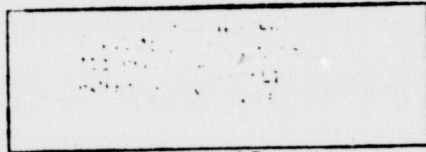
## CLASSIFICATION QUESTIONNAIRE

RECEIVED

DATE QUESTIONNAIRE RECEIVED 12-10-68  
AT LOCAL BOARDLOCAL BOARD NOS. 82-89  
SELECTIVE SERVICE  
ALBANY, NEW YORK

Date of Mailing 12-10-68

COMPLETE AND RETURN BEFORE 12-20-68



(Local Board Stamp)

1. Name of Registrant (First)	(Middle)	(Last)	2. Selective Service No.
DAVID	WAYNE	O'BROCTA	30 88 50 3093
3. Mailing address (Number and street, city, county and State, and Zip code)			
334 NIAGARA FALLS BLVD. TONAWANDA ERIE NY 14223			

(The above items, except the date received back at local board, are to be filled in at the local board before the questionnaire is mailed.)

## INSTRUCTIONS

The law requires you to fill out and return this questionnaire on or before the date shown to the right above in order that your local board will have information to enable it to classify you. A notice of your classification will be mailed to you. When a question or statement in any series does not apply, enter "DOES NOT APPLY," or "NONE," otherwise complete all series.

The law also requires you to notify your local board in writing, within ten days after it occurs, of (1) every change in your address, physical condition and occupational, marital, family, dependency and military status, and (2) any other fact which might change your classification.

Fill out with typewriter or print in ink.

*Mr. L. C. Wick* CEM  
Member, Executive Secretary, or Clerk of local board DY

## STATEMENTS OF THE REGISTRANT

Confidential as Prescribed in the Selective Service Regulations  
Series I.—IDENTIFICATION

1. Name				2. Date of birth	
O'BROCTA DAVID WAYNE				11/17/50	
(Last) (First) (Middle)					
3. Other names used (If none, enter "None")				4. Place of birth	
NONE				ANGOLA, INDIANA	
5. (a) Color eyes	(b) Color hair	(c) Height	(d) Weight	6. Citizen or subject of (country)	
BLUE	BROWN	5'10"	145	U.S.	
7. If naturalized citizen, give date, place, court of jurisdiction and naturalization number					
NONE					
8. Current mailing address					
334 NIAGARA FALLS BLVD. TOWN OF TONAWANDA ERIE NY 14223					
(Number and street or R.F.D. route) (City, town, or village) (County) (State) (Zip code)					
9. Telephone No. (If none, enter "None")				10. Social Security No. (If none, enter "None")	
835-0740				050-44-7786	
11. Name and address of person other than a member of my household who will always know my address					
MRS. ANNA O'BROCTA 75 MILTON ST.					
(Name) (Address)					

SSS Form 100 (Revised 6-8-67) Supplies of previous printings shall be used until exhausted.

(1)

## Series II.—MILITARY RECORD - NONE

(Use Page 6, if necessary)

1. If you are now on or have been separated from active military service enter: (a) Armed Force .....  
 (b) Service number ..... (c) Date of entry .....  
 (d) Date of separation ..... (e) Character of service .....  
 (f) Type of transfer or discharge .....
  2. If you are now a member of a Reserve component (including the National Guard) give: (a) Name and address of unit .....  
 (b) Service number ..... (c) Date of enlistment or appointment .....
  3. If you are now a member of a Reserve Officer Training Corps or any other officer procurement program, state the program, the Armed Force, date of entry, and any identifying number .....
- (Enter on page 6 military service other than in Armed Forces of the United States.)

## Series III.—MARITAL STATUS AND DEPENDENTS

(Use Page 6, if necessary)

1. (a) I (check one): ☒ have never been married; ☐ am a widower; ☐ am divorced; ☐ am married.  
 (b) I (check one if applicable): ☐ DO ☐ DO NOT live with my wife; if not, her address is .....  
DO NOT APPLY  
 (c) We were married at ..... (Place) ..... on ..... (Date) .....
2. I have ..... children under 18 years of age of whom ..... live with me in my home.  
 (Number) ..... (Number) .....
3. If you have no child, other than an unborn child, attach a statement from a physician showing the basis for his diagnosis of pregnancy and the expected date of birth.
4. The following other persons are wholly or partially dependent upon me for support:

Dependent	Relationship	Age	Approximate Income (Annual)	Amount Contributed by Me
Name <u>NONE</u>				
Address .....			\$ .....	\$ .....
Name .....			\$ .....	\$ .....
Address .....			\$ .....	\$ .....
Name .....			\$ .....	\$ .....
Address .....			\$ .....	\$ .....

## Series IV.—REGISTRANT'S FAMILY

(Use Page 6, if necessary)

List below all the living members of your immediate family who are 14 years of age or over (except those shown in Series III) including your father, mother, brothers, sisters, father-in-law, and mother-in-law.

Relatives	Relationship	Age	Can This Relative Contribute to Support of Claimed Dependents?
Name <u>LOUIS T. ORCUTA</u>	<u>FATHER</u>	<u>40</u>	<u>DOES NOT APPLY</u>
Address <u>334 NIAGARA FALLS BLVD.</u>			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name <u>MARY ANN ORCUTA</u>	<u>MOTHER</u>	<u>40</u>	<u>DOES NOT APPLY</u>
Address <u>334 NIAGARA FALLS BLVD.</u>			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name .....			<input type="checkbox"/> YES <input type="checkbox"/> NO
Address .....			<input type="checkbox"/> YES <input type="checkbox"/> NO
Name .....			<input type="checkbox"/> YES <input type="checkbox"/> NO
Address .....			<input type="checkbox"/> YES <input type="checkbox"/> NO

If your answer is "Yes," state extent of ability to contribute in detail on page 6.



## Series V.—OCCUPATION

(Use Page 6, if necessary)

If Engaged in Agriculture, Also Fill in Series VI

1. I am now employed as a (Give full title, for example: bricklayer, farmer, teacher, auto mechanic, steelworker. If not employed, so state.) STEEL WORKER JUNE 1961
2. I do the following kind of work (Give a brief statement of your duties. Be specific.)  
REPAIRING
3. My employer is DOES NOT APPLY  
(Name of organization of proprietor, not foreman or supervisor. Enter "Self" if self-employed.)  
(Address of place of employment—Street, or R.F.D. Route, City, and State)  
whose business is \_\_\_\_\_  
(Nature of business, service rendered, or chief product)
4. (a) I have been employed by my present employer since DOES NOT APPLY  
(Month and year)  
(b) I am paid at the rate of \$ \_\_\_\_\_ ☐ Per Hour ☐ Day ☐ Week ☐ Month.  
(c) I work an average of \_\_\_\_\_ hours per week.
5. Other business or work in which I am now engaged is DOES NOT APPLY  
(Nature of business, if none, enter "NONE")
6. Other occupational qualifications, including hobbies, I possess are MODEL CAR BUILDING, REPAIRING
7. My work experience prior to that described in items 1 and 2, this series, is \_\_\_\_\_  
PART TIME GAS STATION ATTENDANT
8. I speak fluently the following foreign languages or dialects NONE
9. I read and write well the following foreign languages or dialects NONE

## Series VI.—AGRICULTURAL OCCUPATION

(Use Page 6, if necessary)

1. I have been engaged continuously in farmwork since DOES NOT APPLY  
(Month and year)
2. I am (check appropriate box): ☐ Sole owner-operator of a farm ☐ Joint owner-operator with another ☐ Hired manager ☐ Cash tenant or renter ☐ Standing rent tenant ☐ Sharecropper ☐ Share tenant ☐ Wage hand (hired man) ☐ Unpaid family worker.
3. I (check one): ☐ AM ☐ AM NOT personally responsible for the operation of the farm where I work.
4. The principal crops and livestock of the farm I operate or work on are:

Names of Crops	Acres Devoted to Each	Kinds of Livestock	Number of Each Now on Farm

5. Principal products marketed during the last 2 years \_\_\_\_\_
6. Total value of products sold from this farm during the last crop year \$ \_\_\_\_\_
7. The number of year-round workers on this farm is \_\_\_\_\_ of whom \_\_\_\_\_ are hired hands.  
(Number) (Number)
8. Other farm experience \_\_\_\_\_

## Series VII.—MINISTER OR STUDENT PREPARING FOR THE MINISTRY

(Use Page 6, if necessary)

1. I have been a minister of the DEP. OF. NOT. APPLY since          (Month) (Day) (Year)  
and (check one): ☐ HAVE ☐ HAVE NOT been formally ordained.
2. I was formally ordained at          by           
on (date)
3. I am a student preparing for the ministry pursuing a full-time course of instruction at the           
(Name and address of theological or divinity school)  
under the direction of           
(Name of church or religious organization)
4. I am a student preparing for the ministry under the direction of           
(Name of church or religious organization)  
pursuing a full-time course of instruction at the           
(Name and address of school)  
leading to my entrance into           
(Name and address of theological or divinity school)  
in which I have been pre-enrolled.

## Series VIII.—CONSCIENTIOUS OBJECTOR

(DO NOT SIGN THIS SERIES UNLESS YOU CLAIM TO BE A CONSCIENTIOUS OBJECTOR)

I claim to be a conscientious objector by reason of my religious training and belief and therefore request the local board to furnish me a Special Form for Conscientious Objector (SSS Form 150).

(Signature)

## Series IX.—EDUCATION

(Use Page 6, if necessary)

- | GRADE OR YEAR COMPLETED   | ELEMENTARY AND HIGH SCHOOL |   |   |   |   |   |   |   |   |   |    |    | COLLEGE |   |   |   | POST GRADUATE |   |   |   |   |   |  |
|---|----------------------------|---|---|---|---|---|---|---|---|---|----|----|---------|---|---|---|---------------|---|---|---|---|---|--|
|   | NONE                       | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12      | 1 | 2 | 3 | 4             | 1 | 2 | 3 | 4 | 5 |  |
| 1. (a) (Use this table only if you have completed the grade or year indicated.)   |                            |   |   |   |   |   |   |   |   |   |    |    |         |   |   |   |               |   |   |   |   |   |  |
| (b) I graduated from high school in (month) <u>JUNE</u> (year) <u>1969</u>  |                            |   |   |   |   |   |   |   |   |   |    |    |         |   |   |   |               |   |   |   |   |   |  |
| 2. (a) I have completed <u>        </u> years of college, majoring in <u>DEES. NOT. APPLY</u><br>at <u>        </u> and (check one): <input type="checkbox"/> HAVE <input type="checkbox"/> HAVE NOT<br>(Name and address of institution)<br>received a degree.   |                            |   |   |   |   |   |   |   |   |   |    |    |         |   |   |   |               |   |   |   |   |   |  |
| (b) I have received the degree(s) of <u>        </u>  |                            |   |   |   |   |   |   |   |   |   |    |    |         |   |   |   |               |   |   |   |   |   |  |
| 3. (a) I am a full-time student in (check one): <input checked="" type="checkbox"/> High school <input type="checkbox"/> Trade school <input type="checkbox"/> Business school <input type="checkbox"/> College<br><u>SAR DANIEL S. HEDCO 31 CHARRAD</u> majoring in <u>BUSINESS</u><br>(Name and address of institution)<br>preparing for <u>ADMINISTRATION</u> and expect to (check one):<br>(Occupation or profession) <u>DIPLOMA</u><br><input type="checkbox"/> Finish course on <u>        </u> <input checked="" type="checkbox"/> Complete degree requirements on <u>JUNE 30</u><br>(Date) (Date) |                            |   |   |   |   |   |   |   |   |   |    |    |         |   |   |   |               |   |   |   |   |   |  |
| (b) I will be a full time student next semester at <u>DEES. NOT. APPLY</u><br>(Name and address of institution)   |                            |   |   |   |   |   |   |   |   |   |    |    |         |   |   |   |               |   |   |   |   |   |  |

## Series X.—STATEMENT OF ALIEN

1. I was admitted to the United States for (check one): ☐ PERMANENT RESIDENCE ☐ TEMPORARY RESIDENCE on DEES. NOT. APPLY  
(Date of entry)
2. My Alien Registration Number is           
If you have not been admitted to the United States for permanent residence, enter on page 6 a supplemental statement setting out the date you first entered the United States, with the dates of each subsequent departure and reentry when applicable. Attach copies of documentary evidence in your possession verifying your claimed alien status.



2D

## Series XI.—PHYSICAL CONDITION

(Use Page 6, if necessary)

1. If you were ever found not qualified for service in the Armed Forces state (a) when ..... Excluded by medical report .....  
 (b) where .....  
 2. If you have any physical or mental condition which, in your opinion, will disqualify you for service in the Armed Forces, state the condition and attach a physician's statement.  
ALL INFORMATION SUBJECT  
 3. If you have ever been an inmate or a patient in a mental or tuberculosis hospital or institution, give the name and address of each hospital or institution, and the period of hospitalization.  
ALL INFORMATION SUBJECT

## Series XII.—COURT RECORD

(Use Page 6, if necessary)

1. I (check one): ☐ HAVE ☒ HAVE NOT been convicted or adjudicated of a criminal offense or offenses, other than minor traffic violations. (If "HAVE" box is checked, complete this series.)

Offense, whether traffic violation or not	Date of Conviction (Month, Day, Year)	Court (Name and Location)	Sentence

2. I (check one): ☐ AM ☒ AM NOT now being retained in the custody of a court of criminal jurisdiction, or other civil authority. Specify .....  
 (Awaiting trial, on probation, on parole, etc.)

Series XIII.—SOLE SURVIVING SON DOES NOT APPLY

- I (check one): ☐ AM ☐ AM NOT the sole surviving son of a family of which the father or one or more sons or daughters were killed in action or died in line of duty while serving in the Armed Forces of the United States or subsequently died as a result of injuries received or disease incurred during such service.

## REGISTRANT'S CERTIFICATE

INSTRUCTIONS.— You are required to make the registrant's certificate. If you cannot read, the questions and your answers shall be read to you by the person who assists you in completing this questionnaire. If you are unable to sign your name, you shall make your mark in the space provided for your signature in the presence of a person who shall sign as witness.

NOTICE.— Imprisonment for not more than 5 years or a fine of not more than \$10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Military Selective Service Act of 1967.)

I CERTIFY that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief.

DEC 15 1966 (Date) Registrant sign here [Signature] (Signature or mark of registrant)  
 \_\_\_\_\_ (Signature of witness to mark of registrant)

If anyone has assisted you in completing this questionnaire, such person shall sign the following statement: I have assisted the registrant herein named in completing this questionnaire because .....

(For example—registrant unable to read and write English, etc.)

\_\_\_\_\_  
 (Signature of person who has assisted)

\_\_\_\_\_  
 (Number and Street or R.F.D. Route)

Date \_\_\_\_\_

(City)

(State)

(Zip code)

2E

(Registrant Will Make No Entries on This Page)

Dates	Minutes of Actions by Local Board and Appeal Board and on Appeal to the President	Vote	
		Yes	No
JUN 1 1968	1-178	14	7
	1100		
	127 mld		
7-9-69	127 mld.		
9-8-69	109 & 104 mld		
9-19-69	127 mld.		
9-30-69	127 mld.		
OCT 1 1969	II-5 EXTENDED LIABILITY JHN	4	0
	1100		
SEP 1 1970	IA JHN	4	0
SEP 1	Mailed Form 217 (Advice of Right to Personal Appearance and Answer)		
9-23-70	109 & 104 mld.		
	1-0 HCS	3	0
OCT 1 1970	1-0		
10/30/70	253 - LMA-1 mld		
11-6-70	1-0 mld. - accept		
11-27-70	DD-2 mld - accept		
12-3-70	1-0 mld. as papers only case		
12-3-70	1-0 mld. with 1st appeal case		
12-11-70	2-35 & 204 mld.		
12-22-70	1-0 mld. - accepted		
12-22-70	1-0 mld. - accepted	3	0
DEC 23 1970	1-0 mld.		
12-28-70	1-0 mld. priority letter mld.		
1/25/71	257 & 264 mld.		

(Continue on Page 7)

U.S. GOVERNMENT PRINTING OFFICE: 1966 282-998



(7)

# SELECTIVE SERVICE SYSTEM CURRENT INFORMATION QUESTIONNAIRE

Form Approved  
Budget Bureau No. 31-107-111



DATE QUESTIONNAIRE RECEIVED BY LOCAL BOARD

(Local Board Stamp)

TO:

David O'Brocta  
334 Niagara Falls Blvd.  
Tonawanda, NY 14223

Selective Service No.				Date of birth		Class
30	83	50	3093	NOV.	17	1-CH
				(Month)	(Day)	

Date of Mailing JUN 25 1969  
JUL 5 1969

COMPLETE AND RETURN BEFORE

(The above items, except the date questionnaire returned, are to be filled in by the local board clerk before questionnaire is mailed)

The law requires you to fill out and return this questionnaire on or before the date shown to the right above in order that your local board will have current information to enable it to classify you. When a question or statement in any series does not apply, enter "DOES NOT APPLY," or "NONE"; otherwise complete all series. You may attach any additional information you believe should be brought to the attention of the local board. After completing the statements be sure to date the form and sign your name. FILL OUT WITH TYPEWRITER, OR PRINT IN INK.

Mr. P.C. Stillman VChrm.

(Member, Executive Secretary, or Clerk of Local Board)

1k

## STATEMENTS OF THE REGISTRANT

CONFIDENTIAL AS PRESCRIBED IN THE SELECTIVE SERVICE REGULATIONS

### SERIES I.—MAILING ADDRESS

- Name(s) and address(es) of person(s) other than a member of your household who will always know your address  
 WILLIAM O'BROCTA 192 ROGERS AVE TONAWANDA, N.Y.  
 MRS. ANN DOWNING 334 NIAGARA FALLS BLVD, BUFFALO, N.Y.  
 MRS. ANNA O'BROCTA 75 MILTON, TONAWANDA, N.Y.
- My current mailing address is 334 NIAGARA FALLS BLVD, BUFFALO, NEW YORK 14223 (ZIP code)
- My telephone number (home ~~and business~~) is TF-5-0740

### SERIES II.—MARITAL STATUS AND DEPENDENTS

- (a) I (Check one) ☒ HAVE NEVER BEEN MARRIED ☐ AM A WIDOWER  
☐ AM MARRIED ☐ AM DIVORCED  
 (b) I (Check one) ☐ DO ☐ DO NOT live with my wife; if not, her address is  
 DOES NOT APPLY  
 (c) We were married at DOES NOT APPLY on (Date)
- (a) I have the following children under 18 years of age who live with me in my home:  
 Name DOES NOT APPLY Age Name Age  
 Name Age Name Age  
 (b) If you have no child other than an unborn child, attach a statement from a physician showing the basis for his diagnosis of pregnancy and the expected date of birth.
- I (Check one) ☐ DO ☐ DO NOT have dependents other than those listed above. DOES NOT APPLY

### SERIES III.—MILITARY RECORD

- If you are now on or have been separated from active military service enter (a) Armed Force NONE  
 (b) Service number NONE (c) Date of entry NONE  
 (d) Date of separation NONE (e) Type of separation NONE
- If you are now a member of a reserve component (including the National Guard) give (a) Name and address of unit NONE  
 (b) Service number NONE (c) Date of enlistment, transfer, or appointment NONE
- If you are now a member of a Reserve Officer Training Corps or any other officer procurement program describe fully NONE



### SERIES IV.—PRESENT OCCUPATION

1. I am now employed as a (give full title; for example, bricklayer, farmer, teacher, auto mechanic, steel worker) EMPLOYEE, STUDENT FINISHING HIGH SCHOOL  
 If not employed, so state) NONE
2. I do the following kind of work. (Give a brief statement of your duties. Be specific)  
NONE
3. My employer is NONE  
 (Name of organization or proprietor, not foreman or supervisor; enter "Self" if self-employed)
- NONE  
 (Address of place of employment—Street, or R.F.D. Route, City, and State)
- whose business is NONE  
 (Nature of business, service rendered, or chief product)
4. I have been employed by my present employer since NONE (Month and year)
5. Other occupational qualifications, including hobbies, I possess are GOLF, BOWLING AND AUTO REPAIR
6. I speak fluently the following foreign languages or dialects NONE
7. I read and write well the following foreign languages or dialects NONE

### SERIES V.—EDUCATION

- | 1. (a) Grade or year completed<br>(Line through all grades or years successfully completed)<br>(Exclude trade or business schools)   | Elementary and High School |   |   |   |   |   |   |   |   |   |    |    | College |   |   |   | Post Graduate |   |   |   |   |   |  |
|--|----------------------------|---|---|---|---|---|---|---|---|---|----|----|---------|---|---|---|---------------|---|---|---|---|---|--|
|  | None                       | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12      | 1 | 2 | 3 | 4             | 1 | 2 | 3 | 4 | 5 |  |
| (b) I graduated from high school in (month) <u>AUG</u> (year) <u>1969</u>  |                            |   |   |   |   |   |   |   |   |   |    |    |         |   |   |   |               |   |   |   |   |   |  |
| 2. (a) I have completed <u>12</u> years of college, majoring in <u>NONE</u><br>at <u>NONE</u> and (check one) <input type="checkbox"/> HAVE <input type="checkbox"/> HAVE NOT<br>received a degree. (b) I have received the degree(s) of <u>NONE</u>   |                            |   |   |   |   |   |   |   |   |   |    |    |         |   |   |   |               |   |   |   |   |   |  |
| 3. (a) I am a full-time student in (check one) <input checked="" type="checkbox"/> High School <input type="checkbox"/> Trade School <input type="checkbox"/> Business School <input type="checkbox"/> College<br><u>CARDINAL GIANI-HIGH SCHOOL AND COMPLETE AN ENGLISH</u><br><u>COURSE AT KENMORE EAST</u><br>majoring in <u>LIBERAL ARTS</u> preparing for <u>BUSINESS ADMINISTRATION</u><br>and expect to (check one) <input type="checkbox"/> finish course on <input checked="" type="checkbox"/> complete degree requirements on <u>AUG. 15, 1969</u><br>(Date)<br>(b) I will be a full-time student next semester at <u>GENESSEE COMMUNITY COLLEGE, PATAVIA N.Y.</u> |                            |   |   |   |   |   |   |   |   |   |    |    |         |   |   |   |               |   |   |   |   |   |  |

### SERIES VI.—COURT RECORD

1. If you have been convicted or adjudicated of a crime or crimes other than minor traffic violations complete this series. If none enter "NONE."
- | Offense (other than minor traffic violations) | Date of Conviction (Month, Day, Year) | Court (Name and Location) | Sentence |
|---|---------------------------------------|---------------------------|----------|
| <u>NONE</u>                                   |                                       |                           |          |
2. I (Check one) ☐ AM ☒ AM NOT now being retained in the custody of a court of criminal jurisdiction, or other civil authority. Specify (Awaiting trial, on parole, etc.)

### SERIES VII.—PHYSICAL CONDITION

1. If you were ever rejected for service in the Armed Forces state (a) when DOES NOT APPLY  
 (b) where DOES NOT APPLY
2. If you have any physical or mental condition which, in your opinion, will disqualify you for service in the Armed Forces, state the condition and attach a physician's statement if not previously submitted.  
PREVIOUSLY SUBMITTED BY DR. RONCA TO DRAFT BOARD
3. If you have ever been an inmate or a patient in a mental or tuberculosis hospital or institution, give the name and address of each DOES NOT APPLY

### SERIES VIII.—SOLE SURVIVING SON

- I (Check one) ☐ AM ☒ AM NOT the sole surviving son of a family of which the father or one or more sons or daughters were killed in action or died in line of duty while serving in the Armed Forces of the United States or subsequently died as a result of injuries received or disease incurred during such service.

NOTE.—Imprisonment for not more than 5 years or a fine of not more than \$10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification.

REGISTRANT MUST DATE AND SIGN BELOW

July 7, 1969  
 (Date)

David W. J. B. B. B.  
 (Registrant's signature)



SELECTIVE SERVICE SYSTEM

APPROVAL NOT REQUIRED.

## REQUEST FOR UNDERGRADUATE STUDENT DEFERMENT

The Military Selective Service Act of 1967 provides in pertinent part as follows:

Section 6. "(h)(1) Except as otherwise provided in this paragraph, the President shall, under such rules and regulations as he may prescribe, provide for the deferment from training and service in the Armed Forces of persons satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution of learning and who request such deferment. A deferment granted to any person under authority of the preceding sentence shall continue until such person completes the requirements for his baccalaureate degree, fails to pursue satisfactorily a full-time course of instruction, or attains the twenty-fourth anniversary of the date of his birth, whichever first occurs. \* \* \* No person who has received a student deferment under the provisions of this paragraph shall thereafter be granted a deferment under this subsection, \* \* \* except for extreme hardship to dependents (under regulations governing hardship deferments), or for graduate study, occupation, or employment necessary to the maintenance of the national health, safety, or interest. \* \* \* Any person who requests and is granted a student deferment under this paragraph, shall, upon the termination of such deferred status or deferment, and if qualified, be liable for induction as a registrant within the prime age group irrespective of his actual age, unless he is otherwise deferred under one of the exceptions specified in the preceding sentence. As used in this subsection, the term 'prime age group' means the age group which has been designated by the President as the age group from which selections for induction into the Armed Forces are first to be made after delinquents and volunteers."

TO: Local Board No. 88FEDERAL BLDG. (RM. 208)121 ELLICOTT STREET  
BUFFALO, N.Y. 14203

I have read and understand the preceding provisions of the Military Selective Service Act of 1967. I am pursuing a full-time course of instruction at a college, university, or similar institution of learning, and do hereby request that I be granted an undergraduate student deferment in Class II-S.

David W. O'Driscoll  
(Signature)30-48-50-3093  
(Selective Service Number)334 NIAGARA FALLS BLVD.  
(Number and Street or RFD Route)8/6/69  
(Date)Town of Tonawanda, N.Y.  
(City and State)14223  
(ZIP Code)





# SELECTIVE SERVICE SYSTEM

## STUDENT CERTIFICATE

(Complete Appropriate Item or Items)

- Name and Current Mailing Address of Student  
DAVID W. O'BRECKA  
334 NIAGARA FALLS BLVD.  
TOWN OF TONAWANDA, N.Y. 14223  
Date 8/6/69  
Selective Service No.  

30	88	50	3093
----	----	----	------
- The student identified above has been accepted for admission for a full-time course of instruction at the college, university or similar institution of learning shown below which will commence on or about 9/3/69  
(Date)
- The student identified above has entered upon and is satisfactorily pursuing a full-time course of instruction at the college, university, or similar institution of learning shown below in the ☒ 1st ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th year class, which commenced on 9-3-69 and is expected to receive a degree on or about 6-71  
(Date)
- The student identified above completed his ☐ 1st ☐ 2nd ☐ 3rd ☐ 4th year class on \_\_\_\_\_  
(Date)  
at a college, university, or similar institution of learning.
- The student identified above is (check one)  
☐ Not eligible to continue ☐ No longer enrolled  
☐ Graduated \_\_\_\_\_  
(Date)

6. Remarks

### INSTRUCTIONS

Selective Service Regulations define a student's academic year as the twelve month period following the beginning of his course of study.

This form may be submitted when an individual has been accepted for admission as an undergraduate student in a college, university, or similar institution of learning (Item 2) and will be submitted promptly (1) at the beginning of the student's academic year (Item 3, or Items 3 and 4) or (2) when a student is no longer enrolled, is not eligible to continue, or has graduated (Item 5). When graduation occurs, the date of graduation should be entered in the space following that caption. The original may be forwarded to the State Director of the State in which the institution is located, for distribution to local boards within the State, or to other State Directors of Selective Service, or direct to local boards. When the latter plan is followed the address of the registrant's local board should be in his possession on a Registration Certificate (SSS Form 2 or 2-A) or a Notice of Classification (SSS Form 110).

Submission of this form does not constitute a request for deferment.

Authentication of information on this form may be by any means evidencing that a responsible official of the institution has verified its preparation.

#### ADDRESS OF LOCAL BOARD

LOCAL BOARD NO. 88  
FEDERAL BLDG. (RM. 208)  
121 ELLICOTT STREET  
BUFFALO, N.Y. 14203

#### 8. AUTHENTICATION

Genesee Community College  
3837 West Main Street Road  
Batavia, New York 14020

*Don Ketchum*

Name and address of Institution

# SELECTIVE SERVICE SYSTEM CURRENT INFORMATION QUESTIONNAIRE

Form Approved  
Budget Bureau No. 43 R17811

LOCAL BOARD REGION  
FEDERAL BUREAU OF INVESTIGATION  
121 ELLIOTT STREET  
BUFFALO, N.Y. 14203

(Local Board Stamp)



DATE QUESTIONNAIRE RECEIVED BY LOCAL BOARD

RECEIVED

NOV 17 1969

TO:

DAVID W. O'BROCTA  
194 NIAGARA FALLS BLVD.  
TONAWANDA, N.Y.

Selective Service No.				Date of birth	Class
30	82	50	3093	NOV 17 (Month) (Day)	B. 2. —

Date of Mailing

9-19-69

COMPLETE AND RETURN BEFORE

9-29-69

(The above items, except the date questionnaire returned, are to be filled in by the local board clerk before questionnaire is mailed)

The law requires you to fill out and return this questionnaire on or before the date shown to the right above in order that your local board will have current information to enable it to classify you. When a question or statement in any series does not apply, enter "DOES NOT APPLY," or "NONE"; otherwise complete all series. You may attach any additional information you believe should be brought to the attention of the local board. After completing the statements be sure to date the form and sign your name. FILL OUT WITH TYPEWRITER, OR PRINT IN INK.

MR. P.C. STILLMAN V. CHM

(Member, Executive Secretary, or Clerk of Local Board)

## STATEMENTS OF THE REGISTRANT

CONFIDENTIAL AS PRESCRIBED IN THE SELECTIVE SERVICE REGULATIONS

### SERIES I.—MAILING ADDRESS

- Name(s) and address(es) of person(s) other than a member of your household who will always know your address  
 WILLIAM C. BROCTA 192 ROGERS AVE, TONAWANDA, N.Y.  
 MRS. ANNA DOLNINE 334 NIAGARA FALLS BLVD BUFFALO, N.Y.  
 MRS. ANNA C. BROCTA 75 MILTON ST, TONAWANDA, N.Y.
- My current mailing address is 334 NIAGARA FALLS BLVD  
 BUFFALO, N.Y. 14223  
 (ZIP code)
- My telephone number (home or business) is TF 50740

### SERIES II.—MARITAL STATUS AND DEPENDENTS

- (a) I (Check one) ☒ HAVE NEVER BEEN MARRIED ☐ AM A WIDOWER  
☐ AM MARRIED ☐ AM DIVORCED  
 (b) I (Check one) ☐ DO ☐ DO NOT live with my wife; if not, her address is  
 DOES NOT APPLY
- (c) We were married at DOES NOT APPLY on (Date)  
 (d) I have the following children under 18 years of age who live with me in my home:  
 Name NONE Age Name Age  
 Name Age Name Age  
 (b) If you have no child other than an unborn child, attach a statement from a physician showing the basis for his diagnosis of pregnancy and the expected date of birth. DOES NOT APPLY
- I (Check one) ☐ DO ☐ DO NOT have dependents other than those listed above. DOES NOT APPLY

### SERIES III.—MILITARY RECORD

- If you are now on or have been separated from active military service enter (a) Armed Force DOES NOT APPLY  
 (b) Service number (c) Date of entry  
 (d) Date of separation (e) Type of separation
- If you are now a member of a reserve component (including the National Guard) give (a) Name and address of unit DOES NOT APPLY  
 (b) Service number (c) Date of enlistment, transfer, or appointment
- If you are now a member of a Reserve Officer Training Corps or any other officer procurement program describe fully DOES NOT APPLY

(CONTINUED ON REVERSE SIDE)



# **SERIES IV.—PRESENT OCCUPATION**

1. I am now employed as a (give full title: for example, bricklayer, farmer, teacher, auto mechanic, steel worker. If not employed, so state) EMPLOYED, HAS A FULL-TIME COLLEGE STUDENT
2. I do the following kind of work (Give a brief statement of your duties. Be specific) \_\_\_\_\_
3. My employer is \_\_\_\_\_ (Name of organization or proprietor, not foreman or supervisor, enter "Self" if self-employed)
- \_\_\_\_\_ (Address of place of employment—Street, or R.F.D. Route, City, and State)
- whose business is DOES NOT APPLY (Nature of business, service rendered, or chief product)
4. I have been employed by my present employer since DOES NOT APPLY (Month and year)
5. Other occupational qualifications, including hobbies, I possess are AUTO REPAIR, TRUCK DRIVER, GOLFING AND BOWLING.
6. I speak fluently the following foreign languages or dialects NONE
7. I read and write well the following foreign languages or dialects NONE

# **SERIES V.—EDUCATION**

- | 1. (a) Grade or year completed<br>(Line through all grades or years successfully completed;<br>(Exclude trade or business schools) | Elementary and High School |   |   |   |   |   |   |   |   |   |    |    | College |   |   |   | Post Graduate |   |   |   |   |   |
|--|----------------------------|---|---|---|---|---|---|---|---|---|----|----|---------|---|---|---|---------------|---|---|---|---|---|
|  | None                       | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12      | 1 | 2 | 3 | 4             | 1 | 2 | 3 | 4 | 5 |
|  |                            |   |   |   |   |   |   |   |   |   |    |    |         |   |   |   |               |   |   |   |   |   |
- (b) I graduated from high school in (month) AUGUST (year) 1969
2. (a) I am a full-time student in (check one) ☐ High School ☐ Trade School ☐ Business School ☒ College
- GENESSEE COMMUNITY COLLEGE, BATAVIA, NEW YORK (Name and address of institution)
- majoring in BUSINESS ADM. preparing for BUSINESS ADMINISTRATION (Occupation or profession)
- and expect to (check one) ☐ finish course on ☒ complete degree requirements on JUNE 1972 (Date)
- (b) I will be a full-time student next semester at GENESSEE COMMUNITY COLLEGE
3. (a) I have completed — years of college, majoring in DOES NOT APPLY
- at DOES NOT APPLY (Name and address of institution) and (check one) ☐ HAVE ☐ HAVE NOT
- received a degree. (b) I have received the degree(s) of DOES NOT APPLY

# **SERIES VI.—COURT RECORD**

1. If you have been convicted or adjudicated of a crime or crimes other than minor traffic violations complete this series. If none enter "NONE."

Offense (other than minor traffic violations)	Date of Conviction (Month, Day, Year)	Court (Name and Location)	Sentence
NONE			

2. I (Check one) ☐ AM ☒ AM NOT now being retained in the custody of a court of criminal jurisdiction, or other civil authority. Specify NONE (Awaiting trial, on parole, etc.)

# **SERIES VII.—PHYSICAL CONDITION**

1. If you were ever rejected for service in the Armed Forces state (a) when DOES NOT APPLY
- (b) where DOES NOT APPLY
2. If you have any physical or mental condition which, in your opinion, will disqualify you for service in the Armed Forces, state the condition and attach a physician's statement if not previously submitted.
- PREVIOUSLY SUBMITTED BY DR. RONCA TO DRAFT BOARD
3. If you have ever been an inmate or a patient in a mental or tuberculosis hospital or institution, give the name and address of each DOES NOT APPLY

# **SERIES VIII.—SOLE SURVIVING SON**

- 1 (Check one) ☐ AM ☒ AM NOT the sole surviving son of a family of which the father or one or more sons or daughters were killed in action or died in line of duty while serving in the Armed Forces of the United States or subsequently died as a result of injuries received or disease incurred during such service.
- NOTE—Imprisonment for not more than 5 years or a fine of not more than \$10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification.

**REGISTRANT MUST DATE AND SIGN BELOW**

9/29/69  
(Date)

David W. O'Brien  
(Registrant's signature)



**SELECTIVE SERVICE SYSTEM**  
**ADVISE OF RIGHT TO PERSONAL APPEARANCE AND APPEAL**

Approval  
Not Required

LOCAL BOARD NO. 80  
 FEDERAL BLDG. (RM 208)  
 121 ELLICOTT STREET  
 BUFFALO, N.Y. 14203

(Local Board Stamp)

Date of mailing			
SEP 1 1970			
.....			
(Month)	(Day)	(Year)	
Selective Service No.			
30	88	50	3093

DAVID W. O'BROCTA  
 334 NIAGARA FALLS BLVD.  
 TONAWANDA, NEW YORK 14223

Enclosed is your Notice of Classification (SSS Form 110). Your right to ask for a personal appearance before your local board and your right to ask for an appeal to the State Appeal Board is prescribed on the reverse side of the Notice of Classification. Your request for either a personal appearance before your local board or an appeal to the State Appeal Board must be made in writing to this local board within 30 days from the date of mailing as shown above and as shown on the SSS Form 110.

Your local board has available a Government Appeal Agent to advise you concerning your right to a personal appearance, your right of appeal, or any other procedural right or process. The Appeal Agent or the Associate Government Appeal Agent will give you advice only on Selective Service matters at no charge.

If you should desire a meeting with him, this local board office will arrange a time and place for such meeting upon request.

..... T. H. NICHOLS, CHRM. ....  
 Member, Executive Secretary, or Clerk of local board **it**





# SELECTIVE SERVICE SYSTEM STUDENT CERTIFICATE

(Complete Appropriate Item or Items)

1. Name and Current Mailing Address of Student

Date 9/18/70

Selective Service No.

30	88	50	3093
----	----	----	------

2. The student identified above has been accepted for admission for a full-time course of instruction at the college, university or similar institution of learning shown below which will commence on or about

2/31/70  
(Date)3. The student identified above has entered upon and is satisfactorily pursuing a full-time course of instruction at the college, university, or similar institution of learning shown below in the ☐ 1st ☒ 2nd ☐ 3rd ☐ 4th ☐ 5th year class, which commenced on 8/31/70 (Date), and is expected to receive a degree on or about 1/10/72 (Date)4. The student identified above completed his ☒ 1st ☐ 2nd ☐ 3rd ☐ 4th year class on 5/21/70 (Date) at a college, university, or similar institution of learning.

6. The student identified above is (check one)

☐ No longer enrolled☐ Not eligible to continue☐ Graduated

(Date)

6. Remarks

## INSTRUCTIONS

Selective Service Regulations define a student's academic year as the twelve month period following the beginning of his course of study.

This form may be submitted when an individual has been accepted for admission as an undergraduate student in a college, university, or similar institution of learning (Item 2) and will be submitted promptly (1) at the beginning of the student's academic year (Item 3, or Items 3 and 4) or (2) when a student is no longer enrolled, is not eligible to continue, or has graduated (Item 5). When graduation occurs, the date of graduation should be entered in the space following that caption. The original may be forwarded to the State Director of the State in which the institution is located, for distribution to local boards within the State, or to other State Directors of Selective Service, or direct to local boards. When the latter plan is followed the address of the registrant's local board should be in his possession on a Registration Certificate (SSS Form 2 or 2-A) or a Notice of Classification (SSS Form 110).

Submission of this form does not constitute a request for deferment.

Authentication of information on this form may be by any means evidencing that a responsible official of the institution has verified its preparation.

1. ADDRESS OF LOCAL BOARD

LOCAL BOARD 88  
FEDERAL BLDG. (R.M. 208)  
121 ELLICOTT STREET  
BUFFALO, N.Y. 14203

8. AUTHENTICATION

*Don Kellian*  
REGISTRAR

Genesee Community College  
3837 West Main Street Road  
Batavia, New York 14020

Name and address of Institution



APPROVAL NOT REQUIRED.

## SELECTIVE SERVICE SYSTEM

## REQUEST FOR UNDERGRADUATE STUDENT DEFERMENT

The Military Selective Service Act of 1967 provides in pertinent part as follows:

Section 6. "(h)(1) Except as otherwise provided in this paragraph, the President shall, under such rules and regulations as he may prescribe, provide for the deferment from training and service in the Armed Forces of persons satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution of learning and who request such deferment. A deferment granted to any person under authority of the preceding sentence shall continue until such person completes the requirements for his baccalaureate degree, fails to pursue satisfactorily a full-time course of instruction, or attains the twenty-fourth anniversary of the date of his birth, whichever first occurs. \* \* \* No person who has received a student deferment under the provisions of this paragraph shall thereafter be granted a deferment under this subsection. \* \* \* except for extreme hardship to dependents (under regulations governing hardship deferments), or for graduate study, occupation, or employment necessary to the maintenance of the national health, safety, or interest. \* \* \* Any person who requests and is granted a student deferment under this paragraph, shall, upon the termination of such deferred status or deferment, and if qualified, be liable for induction as a registrant within the prime age group irrespective of his actual age, unless he is otherwise deferred under one of the exceptions specified in the preceding sentence. As used in this subsection, the term 'prime age group' means the age group which has been designated by the President as the age group from which selections for induction into the Armed Forces are first to be made after delinquents and volunteers."

TO: Local Board No. 88

FEDERAL BLDG (RM. 208)

121 ELLICOTT STREET  
BUFFALO, N.Y. 14203

I have read and understand the preceding provisions of the Military Selective Service Act of 1967. I am pursuing a full-time course of instruction at a college, university, or similar institution of learning, and do hereby request that I be granted an undergraduate student deferment in Class II-S.

David W. O'Brien  
(Signature)

30-88-50-3093  
(Selective Service Number)

334 Niagara Falls Blvd.  
(Number and Street or RFD Route)

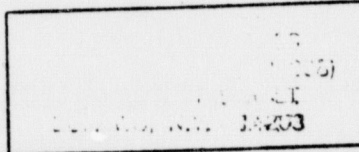
9/18/70  
(Date)

Town of Tonawanda, N.Y. 14223  
(City and State) (ZIP Code)





SELECTIVE SERVICE SYSTEM  
ADVISE OF RIGHT TO PERSONAL APPEARANCE AND APPEAL



(Local Board Stamp)

David W. O'Brocta  
334 Niagara Falls Blvd.  
Tonawanda, NY

Date of mailing			
JAN 6 1973			
(Month) (Day) (Year)			
Selective Service No.			
30	88	50	3093

Enclosed is your Notice of Classification (SSS Form 110). Your right to ask for a personal appearance before your local board and your right to ask for an appeal to the State Appeal Board is prescribed on the reverse side of the Notice of Classification. Your request for either a personal appearance before your local board or an appeal to the State Appeal Board must be made in writing to this local board within 30 days from the date of mailing as shown above and as shown on the SSS Form 110.

Your local board has available a Government Appeal Agent to advise you concerning your right to a personal appearance, your right of appeal, or any other procedural right or process. The Appeal Agent or the Associate Government Appeal Agent will give you advice only on Selective Service matters at no charge.

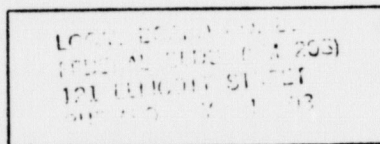
If you should desire a meeting with him, this local board office will arrange a time and place for such meeting upon request.

..... Mr. T. H. Nichols, Chrm. ....  
Member, Executive Secretary, or Clerk of local board



SELECTIVE SERVICE SYSTEM  
**ORDER TO REPORT FOR  
 ARMED FORCES PHYSICAL EXAMINATION**

Approval Not Required



(LOCAL BOARD STAMP)

Oct. 26, 1970

(Date of mailing)

To

David W. O'Brocta  
 334 Niagara Falls Blvd.  
 Tona., NY

SELECTIVE SERVICE NO.			
30	88	50	3093

You are hereby directed to present yourself for Armed Forces Physical Examination by reporting at:

Room 219, Federal Office Bldg., 1021 Main St., Buffalo, NY  
 (Place of reporting)

on November 13, 1970 at 7:30 A.M. SHARP  
 (Date) (Hour)

*T. H. Nichols, Jr.*  
 (Member, Executive Secretary, or clerk of Local Board)

**IMPORTANT NOTICE**

(Read Each Paragraph Carefully)

**TO ALL REGISTRANTS:**

If you are so far from your own Local Board that reporting in compliance with this Order will be a hardship and you desire to report to the Local Board in the area in which you are now located, take this Order and go immediately to that Local Board and make written request for transfer for examination.

When you report pursuant to this order you will be forwarded to an Armed Forces Examining Station where it will be determined whether you are qualified for military service under current standards. Upon completion of your examination, you will be returned to the place of reporting designated above. It is possible that you may be retained at the Examining Station more than 1 day for the purpose of further processing. You will be furnished transportation, and meals and lodging when necessary, from the place of reporting designated above to the Examining Station and return. Following your examination your local board will mail you a statement issued by the commanding officer of the station showing whether you are qualified for military service under current standards.

If you are employed, you should inform your employer of this order and that the examination is merely to determine whether you are qualified for military service. To protect your right to return to your job, you must report for work as soon as possible after the completion of your examination. You may jeopardize your reemployment rights if you do not report for work at the beginning of your next regularly scheduled working period after you have returned to your place of employment.

IF YOU HAVE HAD PREVIOUS MILITARY SERVICE, OR ARE NOW A MEMBER OF THE NATIONAL GUARD OR A RESERVE COMPONENT OF THE ARMED FORCES, BRING EVIDENCE WITH YOU. IF YOU WEAR GLASSES, BRING THEM. IF YOU HAVE ANY PHYSICAL OR MENTAL CONDITION WHICH, IN YOUR OPINION, MAY DISQUALIFY YOU FOR SERVICE IN THE ARMED FORCES, BRING A PHYSICIAN'S CERTIFICATE DESCRIBING THAT CONDITION, IF NOT ALREADY FURNISHED TO YOUR LOCAL BOARD.

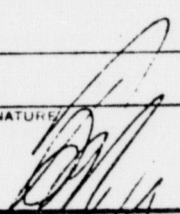
**TO CLASS 1-A and 1-A-O REGISTRANTS:**

If you fail to report for examination as directed, you may be declared delinquent and ordered to report for induction into the Armed Forces. You will also be subject to fine and imprisonment under the provisions of the Military Selective Service Act of 1967.

**TO CLASS 1-O REGISTRANTS:**

This examination is given for the purpose of determining whether you are qualified for military service. If you are found qualified, you will be available, in lieu of induction, to be ordered to perform civilian work contributing to the maintenance of the national health, safety or interest. If you fail to report for or to submit to this examination, you will be subject to be ordered to perform civilian work in the same manner as if you had taken the examination and had been found qualified for military service.



STATEMENT OF ACCEPTABILITY			
LAST NAME - FIRST NAME - MIDDLE NAME		PRESENT HOME ADDRESS	
ABROGTA DAVID MAYHE		334 NIAGARA FALLS PL TONAWANDA NY	
SELECTIVE SERVICE NUMBER	LOCAL BOARD ADDRESS		
0000 0000 0000 0000	LB 88 Buffalo NY		
<p>THE QUALIFICATIONS OF THE ABOVE-NAMED REGISTRANT HAVE BEEN CONSIDERED IN ACCORDANCE WITH THE CURRENT REGULATIONS GOVERNING ACCEPTANCE OF SELECTIVE SERVICE REGISTRANTS AND HE WAS THIS DATE:</p> <p><input checked="" type="checkbox"/> 1 FOUND FULLY ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES.</p> <p><input type="checkbox"/> 2 FOUND NOT ACCEPTABLE FOR INDUCTION UNDER CURRENT STANDARDS.</p>			
REMARKS (These to be directed to Local Board only)			
DATE	PLACE	TYPED OR STAMPED NAME AND GRADE OF JOINT EXAMINING AND INDUCTION STATION COMMANDER	SIGNATURE
13 NOV 70	ARLERS BUFFALO NEW YORK	T C MC NUGG, 2LT, AGC	

DD FORM 62  
1 MAR 59

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

LOCAL BOARD COPY

1

2 November 1970

10

Local Board No. 88  
Federal Building (Room 208)  
121 Ellicott Street  
Buffalo, New York 14203

143  
Plg 11/13

In re: Draft Status of DAVID W. O'BROCTA  
334 Niagara Falls Boulevard  
Buffalo, New York 14223  
Selective Service System No. 30/88/50/3093

Dear Sirs:

I enrolled in Genesee Community College, Batavia, New York, starting as a full time student on September 1, 1969, pursuing a curriculum in Business Administration. Certain courses were required by the College which I did not receive when at Cardinal O'Hara High School.

The first three months from September 1, 1969, to December 31, 1969, were spent taking preparatory courses. I am currently a full time student at Genesee Community College and expect to graduate in December 1971, with an AAS Degree in Business Administration. I then plan to further my studies on January 1972 if possible, at Tri-State College leading to a Bachelor's Degree in Business Administration in December 1973.

During my attendance at Cardinal O'Hara I did not participate in sport activities because I blacked out a number of times when engaged in sports requiring a lot of running or strenuous activity. Likewise, at Genesee College I have not taken the Physical Education Course for this same reason. A medical certificate from Dr. Ronca has previously been submitted to the Local Board #88. If this is not in your file, please let me know and I will get another medical status report and submit same to the Board.

On the basis of the aforementioned facts I wonder if there is a possibility of a change in my draft classification from my present I-A. I recently received a notice to report for the Armed Forces Physical Examination on November 13, 1970.

If my present status remains the same I would appreciate a personal appearance and consultation with Local Board #88. Thanking you for your consideration, I remain,

Respectfully yours,

*David W. O'Brocta*  
David W. O'Brocta  
334 Niagara Falls Boulevard  
Buffalo, New York 14223

DWO:m



# SELECTIVE SERVICE SYSTEM REPORT OF INFORMATION

SELECTIVE SERVICE or STANDBY RESERVE NO.			
30	50	50	309.3
Class or Category			

dg. (Rm. 208)	
DEC 3 1970	
121 St	t Street
(Local Board Stamp)	

INFORMATION RECEIVED BY ☒ PERSONAL VISIT ☐ TELEPHONE ☐ MAIL

1. Name (Last, First, Middle) <i>JOHN F. LUCIVE</i>	2. Date of Birth <i>11/17/50</i>
3. Present Mailing Address <i>354 W. HUNTER FALLS BLVD</i>	
4. New Information (marriage, employment, dependency, death of registrant, reservist, or claimed dependent) <i>REQUEST MEETING WITH GOVERNOR APPEAL AGENT.</i>	
5. Source of Information <input checked="" type="checkbox"/> Registrant <input type="checkbox"/> Relative <input type="checkbox"/> Employer <input type="checkbox"/> Other (Indicate) _____	
Signature <i>John F. Lucive</i>	Date <i>12/3/70</i>

SELECTIVE SERVICE SYSTEM  
**NOTICE OF APPOINTMENT**

Approval  
 Not Required.



LOCAL BOARD NO. 88  
 FEDERAL BUILDING (Rm 203)  
 121 ELLICOTT STREET  
 BUFFALO, N.Y. 14203

(Local Board Stamp)

David W. O'Brocta  
 334 Niagara Falls Blvd.  
 Tonawanda, New York 14223

Date of mailing

December 11, 1970

(Month) (Day) (Year)

Selective Service No.

30 88 50 3093

The appointment you have requested has been arranged

with Mr. Herbert M. Siogal  
 (Name)

Government Appeal Agent  
 (Title)

at Room 217, 121 Ellieott Street  
 (Place of appointment)

Buffalo, New York

on December 22, 1970 at 1:00 P. M.  
 (Date) (Hour)

Mr. T. H. Nichols, Chmn.  
 (Member or clerk of Local Board) *dag*

**IMPORTANT NOTICE**

This appointment is made to enable you to take advantage of the advice and assistance of a member of the uncompensated staff of your selective service local board. These officials, Government Appeal Agents, Associate Government Appeal Agents, and Advisors to Registrants, are available to every selective service registrant. They are appointed to give you advice and assistance in any selective service matter. If you have moved from the area of your own local board, you may contact any local board for information.

The local board with which you are registered will retain jurisdiction over you, even though you should move from the geographic area of the local board. You should notify your local board of any change of address or any change in your status which could change your classification.

It is important that you keep the appointment scheduled above. If you are unable to do so, contact the local board clerk immediately, giving the reason you are unable to appear, and request another appointment, if desired.



## SELECTIVE SERVICE SYSTEM

LOCAL BOARD NO. 88  
FEDERAL BLDG. (RM 203)  
121 ELLICOTT STREET  
BUFFALO, N.Y. 14203  
(Local Board Stamp)  
December 11, 1970

David W. O'Brocta

SS No. 30-88-50-3093

Dear Sir:

The Local Board requests that you attend the next meeting which will be held in this office on Dec. 22, 1970 at 1:00 ~~am~~/p.m. Room 200

Your Appearance is requested for the reason checked below:

- (X) a. Procedural right under Section 1624.1 of Selective Service Regulations.
- ( ) b. Discretionary interview.
- ( ) c. Meeting under Section 1660.20(c) of Selective Service Regulations.

A meeting held under "a" or "b" is for the purpose of determining your classification. It is therefore requested that you submit, prior to or at the meeting, a written statement including any supporting documents, outlining the reasons for your request for deferment.

A meeting held under "c" is for the purpose of determining the type of civilian work you are to perform in lieu of induction into the armed forces.

By Direction  
Local Board No. 88

Mr. T. H. Nichols, Chrm.  
Chairman/Executive Secretary dag

14  
LOCAL BOARD NO. 88  
FEDERAL BLDG. (RM 203)  
121 ELLICOTT STREET  
BUFFALO, N.Y. 14203

December 22, 1970

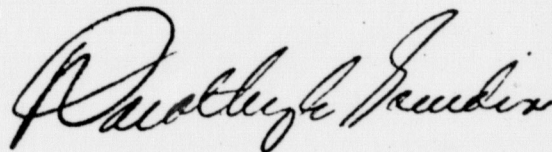
David W. O'Brocta  
334 Niagara Falls Blvd.  
Tonawanda, New York 14223

SS No. 30-SS-50-3093

Dear Sir:

This is to advise you that your medical records have been returned to this local board and after further evaluation, you are still found to be fully acceptable for induction.

By direction of:  
Local Board No. 88



Executive Secretary  
Panel C



NEW YORK STATE HEADQUARTERS  
SELECTIVE SERVICE SYSTEM

Approved by Director  
of Selective Service

15

## SUMMARY OF APPEARANCE BEFORE LOCAL BOARD

Registrant David M. O'Procta Date of Appearance: December 22, 1970  
Selective Service No. 30-33-50-3093  
Local Board Member or Members present at meeting: Mr. Stillman, Mr. Austin, Mr. Sommer Start of Hearing \_\_\_\_\_  
End of Hearing \_\_\_\_\_

Type of Appearance:

- ☒ (X) Procedural right under section 1624.1 of Selective Service Regulations  
☐ ( ) Discretionary interview  
☐ ( ) Meeting under section 1660.20(c) of Selective Service Regulations

Present classification 1-A Desired classification 1-Y ~~2-B~~

Other persons appearing None

Swearing-in administered by member of local board ☒ (X)

Does registrant have an outstanding order to report for induction ( ) Yes (X) No

Complete the following if applicable:

- ( ) 1. It is the local board's opinion that the registrant is not a genuine conscientious objector.  
Explain \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- ( ) 2. It is the local board's opinion that while the registrant may be a genuine conscientious objector, such objection matured prior to the issuance of his order to report for induction.  
Explain \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- ( ) 3. It is the local board's opinion that the registrant is a genuine conscientious objector and that such objection matured after the issuance of the order to report for induction (Local Board is required to reopen the registrant's classification.)

Action taken by local board:

- ☒ (X) The registrant's classification was not reopened.  
☐ ( ) Postponed registrant's induction until \_\_\_\_\_  
☐ ( ) Request permission from State Director to reopen registrant's classification.  
☐ ( ) Classified registrant in Class \_\_\_\_\_  
☐ ( ) Typed of civilian work appropriate for registrant to perform in lieu of induction into armed forces \_\_\_\_\_

Information given by registrant or other persons appearing (indicate to assist the local board in classification. (If no additional information is submitted, so indicate )

The registrant is requesting a medical deferment. He was found acceptable at his physical and was forwarded as a POC and was still acceptable. He submitted new medical statement and was advised that it is just like the statement that had been reviewed, therefore, it is not new information and would be considered at induction. He was informed that the local board does not act on medical conditions, it is up to the examining authorities.

Decision - Class 1-A Contd.

(Attach additional sheets if required)

Written information given by registrant or by other person appearing (Indicate which) to assist the local board in classification: \_\_\_\_\_

Exhibit A \_\_\_\_\_

Exhibit B \_\_\_\_\_

Exhibit C \_\_\_\_\_

Above summary prepared by R. A. Friedman Executive Secretary, Panel C,  
(Name) (Title) 38

Date: Dec. 24, 1970

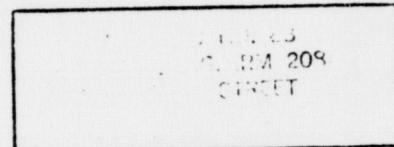




# SELECTIVE SERVICE SYSTEM ORDER TO REPORT FOR INDUCTION

The President of the United States,

To David M. O'Droeta  
334 Niagara Falls Blvd.  
Tonawanda, NY



Jan. 25, 1971  
(Date of mailing)

SELECTIVE SERVICE NO.			
30	83	50	3093

## GREETING:

You are hereby ordered for induction into the Armed Forces of the United States, and to report at Room 217, Federal Office Bldg., 1021 Main St., Buffalo, NY  
(Place of reporting)

on Feb. 5, 1971 at 7:30 A.M. SHARP  
(Date) (Hour)

for forwarding to an Armed Forces Induction Station.

Wm T. H. Nichols CHRM.  
(Member, Executive Secretary, or clerk of Local Board) **jd**

## IMPORTANT NOTICE (Read Each Paragraph Carefully)

IF YOU HAVE HAD PREVIOUS MILITARY SERVICE, OR ARE NOW A MEMBER OF THE NATIONAL GUARD OR A RESERVE COMPONENT OF THE ARMED FORCES, BRING EVIDENCE WITH YOU. IF YOU WEAR GLASSES, BRING THEM. IF MARRIED, BRING PROOF OF YOUR MARRIAGE. IF YOU HAVE ANY PHYSICAL OR MENTAL CONDITION WHICH, IN YOUR OPINION, MAY DISQUALIFY YOU FOR SERVICE IN THE ARMED FORCES, BRING A PHYSICIAN'S CERTIFICATE DESCRIBING THAT CONDITION, IF NOT ALREADY FURNISHED TO YOUR LOCAL BOARD.

Valid documents are required to substantiate dependency claims in order to receive basic allowance for quarters. Be sure to take the following with you when reporting to the induction station. The documents will be returned to you. (a) FOR LAWFUL WIFE OR LEGITIMATE CHILD UNDER 21 YEARS OF AGE—original, certified copy or photostat of a certified copy of marriage certificate, child's birth certificate, or a public or church record of marriage issued over the signature and seal of the custodian of the church or public records; (b) FOR LEGALLY ADOPTED CHILD—certified court order of adoption; (c) FOR CHILD OF DIVORCED SERVICE MEMBER (Child in custody of person other than claimant)—(1) Certified or photostatic copies of receipts from custodian of child evidencing serviceman's contributions for support, and (2) Divorce decree, court support order or separation order; (d) FOR DEPENDENT PARENT—affidavits establishing that dependency.

Bring your Social Security Account Number Card. If you do not have one, apply at nearest Social Security Administration Office. If you have life insurance, bring a record of the insurance company's address and your policy number. Bring enough clean clothes for 3 days. Bring enough money to last 1 month for personal purchases.

This Local Board will furnish transportation, and meals and lodging when necessary, from the place of reporting to the induction station where you will be examined. If found qualified, you will be inducted into the Armed Forces. If found not qualified, return transportation and meals and lodging when necessary, will be furnished to the place of reporting.

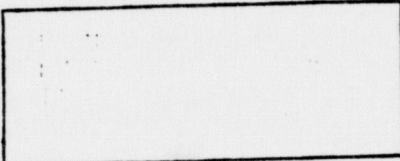
You may be found not qualified for induction. Keep this in mind in arranging your affairs, to prevent any undue hardship if you are not inducted. If employed, inform your employer of this possibility. Your employer can then be prepared to continue your employment if you are not inducted. To protect your right to return to your job if you are not inducted, you must report for work as soon as possible after the completion of your induction examination. You may jeopardize your reemployment rights if you do not report for work at the beginning of your next regularly scheduled working period after you have returned to your place of employment.

Willful failure to report at the place and hour of the day named in this Order subjects the violator to fine and imprisonment. Bring this Order with you when you report.

If you are so far from your own local board that reporting in compliance with this Order will be a serious hardship, go immediately to any local board and make written request for transfer of your delivery for induction, taking this Order with you.

17  
Approval

SELECTIVE SERVICE SYSTEM  
POSTPONEMENT OF INDUCTION



(Local Board Stamp)



Jan. 25, 1971

(Date)

DAVID To: J. J. BORDA

(Name of registrant)

SELECTIVE SERVICE No 50 3093

RSN: 1-3-06-03

134 NIMMFA FALLS BLVD.

(Number and street or R. F. D. route)

TOMAHAWK

ENIE

NEW YORK

(City, town, or village)

(County)

(State)

(Zip)

1. By authority of

your induction into the armed forces heretofore fixed for

(Date)

in Order to

for Induction (SSS Form 252) issued by this local board

(Date)

POSTPONED until BOARD MEETING

(Date)

You will be advised by this local board as to the date you will present yourself to this board for deli  
induction after termination of this postponement

2. This postponement will terminate if at any time the reasons therefor should cease to exist.  
reasons for this postponement should cease to exist, it is your duty to report that fact immediately  
local board.

3. It is your continuous duty to report for induction at such time and place as may hereafter be  
this local board

QUALIFIES FOR 1-SC

*H. H. H. H.* CHRM.  
(Member or clerk of local board)



Buffalo SC 38



## SELECTIVE SERVICE SYSTEM

Approval Not Required.

## ORDER TO REPORT FOR INDUCTION

The President of the United States,

To David Wayne O'Brocta  
334 Niagara Falls Blvd.  
Tonawanda, New York 14223

LOCAL BOARD NO. 88  
FEDERAL BLDG. (Rm 208)  
121 ELLICOTT STREET  
BUFFALO, N.Y. 14203

(Local Board Stamp)

OCT 8, 1971

(Date of mailing)

SELECTIVE SERVICE NO.

30 88 50 3093

## GREETING:

You are hereby ordered for induction into the Armed Forces of the United States, and to report  
at RM 217 ARMED FORCES EXAMINING & ENTRANCE STATION 1021 MAIN ST. BUFFALO, N.Y.  
(Place of reporting)

on NOV 18, 1971 at 7:30 a.m. SHARP  
(Date) (Hour)

for forwarding to an Armed Forces Induction Station.

*John G. H. [Signature]*  
(Member, Executive Secretary, or clerk of Local Board)

IMPORTANT NOTICE  
(Read Each Paragraph Carefully)

If you are so far from your own local board that reporting in compliance with this Order will be a serious hardship, go immediately to any local board and make written request for transfer of your delivery for induction, taking this Order with you.

IF YOU HAVE HAD PREVIOUS MILITARY SERVICE, OR ARE NOW A MEMBER OF THE NATIONAL GUARD OR A RESERVE COMPONENT OF THE ARMED FORCES, BRING EVIDENCE WITH YOU. IF YOU WEAR GLASSES, BRING THEM. IF MARRIED, BRING PROOF OF YOUR MARRIAGE. IF YOU HAVE ANY PHYSICAL OR MENTAL CONDITION WHICH, IN YOUR OPINION, MAY DISQUALIFY YOU FOR SERVICE IN THE ARMED FORCES, BRING A PHYSICIAN'S CERTIFICATE DESCRIBING THAT CONDITION. IF NOT ALREADY FURNISHED TO YOUR LOCAL BOARD.

Valid documents are required to substantiate dependency claims in order to receive basic allowance for quarters. Be sure to take the following with you when reporting to the induction station. The documents will be returned to you. (a) FOR LAWFUL WIFE OR LEGITIMATE CHILD UNDER 21 YEARS OF AGE—original, certified copy or photostat of a certified copy of marriage certificate, child's birth certificate, or a public or church record of marriage issued over the signature and seal of the custodian of the church or public records; (b) FOR LEGALLY ADOPTED CHILD—certified court order of adoption; (c) FOR CHILD OF DIVORCED SERVICE MEMBER (Child in custody of person other than claimant)—(1) Certified or photostatic copies of receipts from custodian of child evidencing serviceman's contributions for support, and (2) Divorce decree, court support order or separation order; (d) FOR DEPENDENT PARENT—affidavits establishing that dependency.

Bring your Social Security Account Number Card. If you do not have one, apply at nearest Social Security Administration Office. If you have life insurance, bring a record of the insurance company's address and your policy number. Bring enough clean clothes for 3 days. Bring enough money to last 1 month for personal purchases.

This Local Board will furnish transportation, and meals and lodging when necessary, from the place of reporting to the induction station where you will be examined. If found qualified, you will be inducted into the Armed Forces. If found not qualified, return transportation and meals and lodging when necessary, will be furnished to the place of reporting.

You may be found not qualified for induction. Keep this in mind in arranging your affairs, to prevent any undue hardship if you are not inducted. If employed, inform your employer of this possibility. Your employer can then be prepared to continue your employment if you are not inducted. To protect your right to return to your job if you are not inducted, you must report for work as soon as possible after the completion of your induction examination. You may jeopardize your reemployment rights if you do not report for work at the beginning of your next regularly scheduled working period after you have returned to your place of employment.

Willful failure to report at the place and hour of the day named in this Order subjects the violator to fine and imprisonment. Bring this Order with you when you report.

Form Approved  
Budget Bureau No. 33-8216SELECTIVE SERVICE SYSTEM  
REPORT OF INFORMATION

SELECTIVE SERVICE or STANDBY RESERVE NO.			
3	54	56	3075
Class or Category 1-a			

LOCAL BOARD NO. 82  
FEDERAL BUREAU OF INVESTIGATION  
101 EIGHTH STREET  
BUFFALO, N.Y. 14203

(Local Board Stamp)

INFORMATION RECEIVED BY ☐ PERSONAL VISIT ☐ TELEPHONE ☐ MAIL

1. Name (Last, First, Middle) *O'Brien, David H.* 2. Date of Birth *11-17-50*

3. Present Mailing Address

4. New Information (marriage, employment, dependency, death of registrant, reservist, or claimed dependent)

*Regis failed to report for induction  
on Nov 15, 1971.*

Source of Information

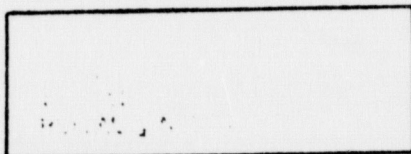
☐ Registrant ☐ Relative  
☐ Employer ☐ Other (Indicate) \_\_\_\_\_

Date



SELECTIVE SERVICE SYSTEM  
DELINQUENT REGISTRANT REPORT

Approved  
not  
20



(Local Board Stamp)



NOV 26, 1971  
(Date)

TO: Hon. H. KENNETH SCHROEDER, United States Attorney.  
502 U. S. COURT HOUSE, BUFFALO, NEW YORK  
(Address)

I. IDENTIFICATION OF DELINQUENT:

Full name of delinquent:		N/A	
<u>O'BROCTA</u> (Last)	<u>David</u> (First)	<u>Wayne</u> (Middle)	(Alias, if any)
Last known address:			Last known telephone no.:
<u>334 Niagara Falls Blvd., Tonawanda Erie N.Y. 14223</u> (Number and street or R. F. D. route) (City, town, or village) (County) (State) (Zip Code)			<u>TF5-0740</u>
Selective Service No.:	Social Security No.:	Selective Service classification:	
<u>30 88 50 3093</u>	<u>050 44 7736</u>	<u>1-A</u>	
Color of eyes:	Color of hair:	Height:	Weight:
<u>Blue</u>	<u>Brown</u>	<u>5 10</u>	<u>145</u>
Other obvious physical characteristics:		<u>NONE</u>	
Date of birth:		Place of birth:	
<u>NOV 17, 1950</u>		<u>Angola, Indiana</u>	
Prior military service:		Date of registration:	
<u>None</u>		<u>Nov 22, 1968</u>	
Place of registration:		<u>Tonawanda, NY</u>	
(Armed Force)	(Service number)	(Date of entry)	
(Name of last organization)		(Date of separation)	
This delinquent has a court record as follows:			
Offense	Date of Conviction (Month, day, year)	Court (Name and location)	Sentence
<u>N/A</u>			

2. OFFENSES:

This delinquent violated an order of this Local Board (check applicable box)

- ☒ Order to Report for Induction (SSS Form 252).  
☐ Order for Transferred Man to Report for Induction (SSS Form 253).

He committed this violation by (check applicable box)

- ☒ Failing to report for induction.  
☐ Reporting for induction but failing or refusing to submit to induction into the Armed Forces at the  
Armed Forces Examining and Entrance Station located at \_\_\_\_\_

The order indicated was mailed on OCT 8, 1971 (Date of mailing) to this delinquent at  
334 Niagara Falls Blvd., Tonawanda, NY (Address) to report on NOV 18, 1971 (Date)

In addition to failing to report for induction into the Armed Forces this delinquent has also failed to perform the following duties at the times indicated:

DUTIES

DATES

## 2. HOW TO LOCATE DELINQUENT

204

The delinquent \_\_\_\_\_ been located on \_\_\_\_\_ at \_\_\_\_\_  
(Has, has not) (Date) (Address)

The person who will always know the delinquent's address is Mr. Anna O'Driscoll  
(Name)

75 Hilton, Tonawanda, NY This person has not been contacted by  
(Address) (Has, has not)

\_\_\_\_\_ on \_\_\_\_\_ with the following result \_\_\_\_\_  
(Letter, telephone, in person) (Date)

The delinquent's last known place of employment or business is N/A  
(Name)

\_\_\_\_\_ His employer \_\_\_\_\_ been contacted by  
(Address) (Telephone number) (Has, has not)

\_\_\_\_\_ on \_\_\_\_\_ with the following result \_\_\_\_\_  
(Letter, telephone, in person) (Date)

4. Mail directed to the delinquent IS NOT returned by the post office.  
(Is, is not)

5. REMARKS: (Include additional efforts to locate delinquent or names of individuals who may know whereabouts of the delinquent.)

## 6. FUTURE INFORMATION:

You will be advised promptly by letter of any change in this delinquent's status and of any additional facts which may come to the attention of this board concerning his whereabouts or which may aid you in apprehending and prosecuting him.

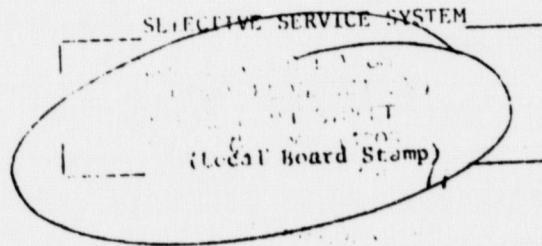
Chris  
 (Member, Executive Secretary or Clerk of Local Board)

This form shall be used to report to the United States Attorney those delinquents who fail to report for induction or who fail or refuse to submit to induction. Other delinquences, if reported to the United States Attorney, shall be reported by letter.

This form shall be made out in quadruplicate. The original and two copies are forwarded to the State Director of Selective Service, who shall transmit the original and one copy to the United States Attorney for the judicial district in which the local board is located and retain one copy. One copy of the form shall be filed in the Cover Sheet (SSS Form 101) of the delinquent.



21



State Director of Selective Service  
Federal Building, 641 Broadway  
Albany, New York 12207

NOV 30, 1971

Attention: Operations Section  
Subject: O'BROCTA, David Wayne  
SS No. 30-88-50-3093

Dear Sir:

We are forwarding the Cover Sheet (SSS Form 101) of the above named registrant.

☐ As requested by the State Director (SSR 1606.33)

☒ For the State Director's review and advise  
Re **per Mr. Stillman's request**

☐ For review under LBM 14

☐ For transmittal to the appropriate Scientific Advisory Committee (OC No. 65)

☐ For transmittal to the appropriate appeal board (SSR 1626.13) LO 57 mailed

☐ For transmittal to the National Selective Service Appeal Board on appeal to the President (SSR 1627.5). LO 53 mailed

☐ For transmittal to the appropriate state headquarters - Class 1 W (SSR 1660.31)

Please acknowledge receipt of the enclosed cover sheet by signing and returning the duplicate of this letter

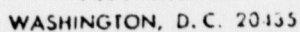
By Direction  
Local Board No. 88

(Mrs) Alice Smith Clerk  
~~Executive Secretary~~

Enc

Cover Sheet received on 12-1-71 by \_\_\_\_\_

10-42 (Revised 10.2.70)



Dear Sir:

The file folders of the following subject registrants are returned. They were reported to the United States Attorney for prosecution on this date.

BARBER, JR., Thomas J.	30-32-70-100
BARTON, Jacob H.	30-37-61-100
BARTON, Peter J.	30-32-60-211
BARTON, Thomas A.	30-32-71-610
BIGGS, Paul J.	30-32-60-121
BLOOM, David H.	30-32-50-200
BLOOM, David H.	30-32-50-211
BLOOM, David H.	30-32-60-160
BLOOM, David H.	30-32-60-161
BLOOM, David H.	30-32-60-162
BLOOM, David H.	30-32-60-163
BLOOM, David H.	30-32-60-164
BLOOM, David H.	30-32-60-165
BLOOM, David H.	30-32-60-166
BLOOM, David H.	30-32-60-167
BLOOM, David H.	30-32-60-168
BLOOM, David H.	30-32-60-169
BLOOM, David H.	30-32-60-170
BLOOM, David H.	30-32-60-171
BLOOM, David H.	30-32-60-172
BLOOM, David H.	30-32-60-173
BLOOM, David H.	30-32-60-174
BLOOM, David H.	30-32-60-175
BLOOM, David H.	30-32-60-176
BLOOM, David H.	30-32-60-177
BLOOM, David H.	30-32-60-178
BLOOM, David H.	30-32-60-179
BLOOM, David H.	30-32-60-180
BLOOM, David H.	30-32-60-181
BLOOM, David H.	30-32-60-182
BLOOM, David H.	30-32-60-183
BLOOM, David H.	30-32-60-184
BLOOM, David H.	30-32-60-185
BLOOM, David H.	30-32-60-186
BLOOM, David H.	30-32-60-187
BLOOM, David H.	30-32-60-188
BLOOM, David H.	30-32-60-189
BLOOM, David H.	30-32-60-190
BLOOM, David H.	30-32-60-191
BLOOM, David H.	30-32-60-192
BLOOM, David H.	30-32-60-193
BLOOM, David H.	30-32-60-194
BLOOM, David H.	30-32-60-195
BLOOM, David H.	30-32-60-196
BLOOM, David H.	30-32-60-197
BLOOM, David H.	30-32-60-198
BLOOM, David H.	30-32-60-199
BLOOM, David H.	30-32-60-200

Please notify this office of any change in status of the registrants.

Thank you for your cooperation.

Sincerely

Sincerely,  
W. I. Silverberg  
WILLIARD I. SILVERBERG  
Regional Counsel

## Enclosures



23

SELECTIVE SERVICE SYSTEM  
STATE HEADQUARTERS  
FEDERAL BUILDING  
441 BROADWAY  
ALBANY, NEW YORK 12207

April 5, 1972

3-4.5-08

United States Attorney's Office  
District

Eastern ☐ Southern ☐  
Northern ☐ Western ☒

Subject: O'BROCTA, David W.  
SS No. : 30 88 50 3093

1. The subject registrant was reported to your office as a violator of Selective Service Law on March 30, 1972  
(date)
2. The file has been reviewed for procedural correctness and the following action is recommended:

☒ No procedural errors therefore continue prosecutive action.

☐ Recommend your case be closed as the file has been returned to the local board for administrative action.

Remarks:

For The State Director

cc: Local Board No. 88 ✓

*Byron H. Meader*  
BYRON H. MEADER  
LTC, Arty  
Manager, Operations Division

4-22-71

SELECTIVE SERVICE SYSTEM  
STATE HEADQUARTERS  
FEDERAL BUILDING  
441 BROADWAY

ALBANY, NEW YORK 12207  
April 5, 1972

Chairman,  
Local Board No. 88

3-4.5-08

SUBJECT: O'BROCTA, David W.  
SS NO. : 30 88 50 3093  
RSN :

Dear Sir:

- ☐ Forward Cover Sheet (SSS Form 101)
- ☐ For review under LBM 14 or OM 15
- ☐ Forward Registration Card (SSS Form 1/1-A)
- ☐ Postpone induction pending review of file
- ☐ Make direct reply to enclosed inquiry. If subject is not your registrant, return inquiry to this headquarters.
- ☐ Please advise whether you have received the Cover Sheet of the above-named registrant which was forwarded to you on
- ~~XXXXX~~ Acknowledge receipt of the enclosed Cover Sheet (SSS Form 101) by signing and returning the duplicate of this letter.
- ☐ REMARKS:

For The State Director

*Byron H. Meader*  
BYRON H. MEADER  
LTC, Arty  
Manager, Operations Division

Cover Sheet rec'd on 4-6-72 by Sc

(6-17-71)



Form Approved  
August 1969 No. 17-0214

SELECTIVE SERVICE or STANDBY RESERVE NO			
30	33	32	3073
(Class or Category)			
1-A 2-A			

(Local Board Stamp)

7C-143

2 Date of Birth

1 Name (Last, First, Middle) D'Siccia, David W.

3. Present Mailing Address

4 New information (marriage, employment, dependency, death of registrant, reservist, or claimed dependent)

Currently enrolled as full time student at University of Buffalo  
and request that I may receive a student deferment  
as I have been enrolled in school since Sept of 1969.  
I also will be willing to report for induction if called  
upon.

### 5. Source of information

☐ Registrant

☐ Relative

☐ Employer☐ Other (Indicate) \_\_\_\_\_

## Synopsis

x David W. O'Brien

Date \_\_\_\_\_

x 8/31/72

## United States Department of Justice

ADDRESS ONLY TO  
UNITED STATES ATTORNEY  
ATTENTION OF  
ASSISTANT ATTORNEY GENERAL

R. J. Arcara

OUR REFERENCE  
RJA:gw

## UNITED STATES ATTORNEY

WESTERN DISTRICT OF NEW YORK  
UNITED STATES COURT HOUSE  
BUFFALO, NEW YORK 14202

September 8, 1972

Clerk,  
Local Board No. 88  
Selective Service System  
16 Federal Building  
111 W. Huron Street  
Buffalo, New York 14202

Re: O'Brocta, David Wayne  
SSNo.: 30-88-50-3093

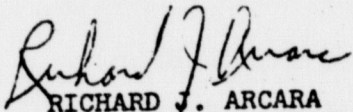
Dear Madam:

Investigation by the F.B.I. has disclosed that the above named registrant has expressed a desire to be inducted into the Armed Forces.

We request that you reorder this registrant for induction into the Armed Forces in accordance with your regulations.

Very truly yours,

JOHN T. ELFVIN  
United States Attorney

By:   
RICHARD J. ARCARA  
Assistant United States Attorney



27 2'

September 20, 1972

Honorable John T. Elfvin  
United States Attorney  
502 U. S. Court House  
Buffalo, New York

Attention: Mr. Richard J. Arcora  
Asst. U. S. Attorney

Subject : O'BROCTA, David W.  
SS No. : 30-35-50-3093  
(70) 143

Dear Sir:

As per your letter of September 8, 1972, the above-subject registrant has been ordered for induction by letter to report on October 11, 1972.

You will be notified whether or not he reports.

The local board is in receipt of a request from the registrant for a student deferment. He states he is currently enrolled as a full time student at University of Buffalo and has been enrolled in school since September 1969. His request was received August 31, 1972.

Kindly advise what action if any should be taken by the local board concerning the registrant's request.

Thank you for your cooperation.

By direction of:  
Local Board No. 88

(Mrs.) Dorothy A. Wheeler

cc: Regional Attorney  
F.B. I.

28

SELECTIVE SERVICE SYSTEM  
REPORT OF INFORMATION

SELECTIVE SERVICE or STANDBY RESERVE NO			
30	88	50	3093
Class or Category			

112 West ...  
...  
...

(Local Board Stamp)

INFORMATION RECEIVED BY ☐ PERSONAL VISIT ☐ TELEPHONE ☐ MAIL

1 Name (Last, First, Middle)

O'BROCTA, DAVID WAYNE

2 Date of Birth

3 Present Mailing Address

4 New Information (marriage, employment, dependency, death of registrant, reservist, or claimed dependent)

MISS YAMARINO, CONTACTED MAJOR BLAIR RELATIVE TO INDUCTION  
DATE FOR THE ABOVE-SUBJECT REGISTRANT. PERMISSION WAS  
GRANTED TO ORDER REGISTRANT FOR INDUCTION ON OCT 13, 1972  
PER THE U.S. ATTORNEY'S REQUEST.

5 Source of Information

☐ Registrant☐ Relative☐ Employer☐ Other (Indicate) \_\_\_\_\_

Signature

D. Wheeler

Date

9-20-72



September 20, 1972

David W. O'Drocta  
334 Niagara Falls Blvd.  
Tonawanda, New York 14223

SS No.: 30-88-50-2093

Dear Sir:

Since your original Order to Report for Induction is still outstanding, you are hereby directed to report for induction on October 11, 1972 at 7:30 A.M. to Room 1007, Federal Building 111 West Huron Street, Buffalo, New York.

By direction of:  
Local Board No. 88

*R. E. Schaff*  
Chairman

FORM APPROVED  
BUDGET BUREAU NO. 33-1123

# SELECTIVE SERVICE SYSTEM STUDENT CERTIFICATE

(Complete Appropriate Item or Items)

1. Name and Current Mailing Address of Student

*David Wayne O'Brien*  
334 W. MAIN ST. FALLS BLVD.  
TOWN OF FOWARD, N.Y. 14223

Date

9/28/72

Selective Service No.

30	88	50	3093
----	----	----	------

Student No.

2. The student identified above has been accepted for admission for a full-time course of instruction at the college, university or similar institution of learning shown below which will commence on or about

(Date)

3. The student identified above has entered upon and is satisfactorily pursuing a full-time course of instruction at the college, university, or similar institution of learning shown below in the ☐ 1st ☐ 2nd ☒ 3rd ☐ 4th ☐ 5th year class, which commenced on 4/6/72 (Date) and is expected to receive a degree on or about (Date)

4. The student identified above is (check one)

☐ Not eligible to continue☐ No longer enrolled full time☐ Graduated (Date)

5. Remarks

DAVID WAYNE O'BRIEN IS A FULL TIME STUDENT IN  
MILLARD TOWN SCHOOL DISTRICT (LEARNING DIVISION)

## INSTRUCTIONS

Selective Service Regulations define a student's academic year as the twelve month period following the beginning of his course of study.

This form may be submitted when an individual has been accepted for admission as an undergraduate student in a college, university, or similar institution of learning (item 2) and will be submitted promptly (1) at the beginning of the student's academic year (item 3) or (2) when a student is no longer enrolled full time, is not eligible to continue, or has graduated (item 4). When graduation occurs, the date of graduation should be entered in the space following that caption. The original may be forwarded to the State Director of the State in which the institution is located, for distribution to local boards within the State, or to other State Directors of Selective Service, or direct to local boards. When the latter plan is followed the address of the registrant's local board should be in his possession on a Registration Certificate (SSS Form 2) or a Notice of Classification (SSS Form 110).

Submission of this form does not constitute a request for deferment.

Authentication of information on this form may be by any means evidencing that a responsible official of the institution has verified its preparation.

6. ADDRESS OF LOCAL BOARD

LOCAL # 818

7. AUTHENTICATION

*John M. Neumister*

OFFICE OF EDUCATION  
STATE UNIVERSITY OF NEW YORK  
SUNY - BINGHAMTON

Name and Address of Institution



30

DAVID WAYNE O'BROCTA  
334 Niagara Falls Blvd.  
Buffalo, New York 14223

Age: 21

Birthplace: Angola, Indiana  
Nov. 17, 1950

Social Security No: 050-44-7786

#### EDUCATION

- (1) Cardinal O'Hara High School 1969
- (2) Enrolled in Genesee Community College, Batavia, N.Y., Sept. 1969  
Graduated in June 1972 with an A.A.S. Degree, Associate in Applied Science in Field of Business Administration.
- (3) Enrolled in SUNY at Buffalo, Millard Fillmore College, Sept. 1972, as a full time student in the School of Management. Continuing my business education and expect to graduate in June 1974 with a Bachelor of Science in Business Administration.

#### DRAFT CLASSIFICATION

Selective Service No. 30 88 50 3093

Jan. 22, 1969	1-SH
Oct. 21, 1969	2-S
Sept. 1, 1970	1-A
Oct. 6, 1970	1-A
Dec. 23, 1970	1-A Cont'd
Feb. 2, 1971	1-SC
June 1, 1971	1-A

#### Induction Notices:

- (1) Mailed Jan. 25, 1971 to report for induction on Feb. 5, 1971.
- (2) Mailed Jan. 25, 1971, a postponement of induction, by Authority of 1625.3B, until February Board Meeting.
- (3) Mailed Oct. 8, 1971 to report for induction on Nov. 18, 1971. Deferment requested and obtained by Rep. Henry P. Smith.

#### Draft Board:

Local Board No. 88  
Buffalo, N. Y. 14203

2111102 07-02  
01-00000

30A

Page 2

G.I.F. J.A.

Armed Forces Physical Exam:

Mailed Oct. 26, 1970. Took the physical at Room 219, Federal Office Bldg., 1021 Main Street, Buffalo, N.Y. on Nov. 13, 1970, as directed by letter. Passed the physical on Nov. 13, 1970.

Communications between Genesee Community College and Local Board, Dec. 1971:

I requested college to send data to the Local Board as to my graduation date.

Current Sequence of Events:

- (1) On Aug. 28, 1972, FBI came to my home and stated the Local Board has not received notice of my school status. Special Agent, Richard Stotts indicated there was a grievance filed against me. I was not home and he talked to my mother.
- (2) On Aug. 30, 1972, I met with Mr. Stotts at his office, and answered all his questions. He recommended I go to the Draft Board and explain that I was enrolled at SUNY at Buffalo.
- (3) On Aug. 31, 1972, I went to Local Board 88 and talked to a girl. She asked me to write down the information I wanted to convey. I complied and was dismissed.

Latest Induction Notice:

Received Sept. 20, 1972, to report for induction on October 11, 1972, signed by Chairman R. E. Schafflaw.

*and to the State*

RECEIVED  
21.11.72  
17.11.72



17  
10-11-72  
143

STATE UNIVERSITY OF NEW YORK AT BUFFALO

Millard Fillmore College  
Formerly The University of Buffalo, Founded 1846

Office of the Dean

Hayes Hall

Administration Road

Buffalo, New York 14214

Telephone 831 - 2204

Area Code 716

September 28, 1972

Local Board #88  
Federal Building, Room 16  
111 West Huron Street  
Buffalo, New York 14202

This is to affirm that David W. O'Brocta  
(Name)

334 Niagara Falls Boulevard, Tonawanda, New York 14223  
(Address)

is currently enrolled in Millard Fillmore College, the evening and adult education division of the State University of New York at Buffalo, for 3 ( ) course(s) as follows:

Department & Number	Title	Credit	Day	Hour
Mathematics 116 A	Elementary Functions and Coordinate Geometry	4	M & W	6:25
Psychology 101 D2	General Psychology	4	T & T	8:25
Marketing 402 K	Analysis of Management	4	F	6:50

For this session the beginning of instruction is September 6, 1972.

Examinations and December 14, 1972.

Date: September 28, 1972

Very truly yours,

*Richard C. Guenther*  
Richard C. Guenther  
Director of Registration

RCG:sw

Form Approved  
Budget Bureau No. 33-821ASELECTIVE SERVICE SYSTEM  
REPORT OF INFORMATION

SELECTIVE SERVICE or STANDBY RESERVE NO.

30 88 50 3093

(Class or Category)

Local Board No. 88  
Federal Bldg., Rm 16  
111 West Heron St.  
Buffalo, N. Y. 14202

(Local Board Stamp)

INFORMATION RECEIVED BY ☐ PERSONAL VISIT ☒ TELEPHONE ☐ MAIL

1. Name (Last, First, Middle)

O'BROCTA, DAVID W.

2. Date of Birth

3. Present Mailing Address

4. New Information (marriage, employment, dependency, death of registrant, reservist, or claimed dependent)

Contacted Mr. Stillman relative to SSS Form 109, and letter received for the above named registrant. Asked him what action should be taken, as registrant does not qualify for student deferment.

Mr. Stillman advised me to inform the U.S. Attorney of what information was received. Advise the U.S. Attorney that registrant does not qualify for student deferment, as he was ordered for induction prior to his re-entry into school. However, registrants induction can be postponed until the end of his current semester.

5. Source of Information

☐ Registrant☐ Relative☐ Employer☐ Other (Indicate) \_\_\_\_\_

6. Signature

Ira Coumans

Date

10-3-72



10/10/72  
10/10/72  
10/10/72  
10/10/72  
10/10/72

34

October 3, 1972

Honorable John T. Elfvin  
United States Attorney  
502 U.S. Court House  
Buffalo, NY. 14202

ATTN: Mr. Arcara

Subject: O'DROCTA, David W.  
SS. No.: 88-08-50-3073  
R.S.N. : 4703143

Dear Sir:

In our letter to you dated September 20, 1972 you were advised that the above named registrant has requested a student deferment. Verification of same was received in this office on October 2, 1972.

Kindly note that registrant does not qualify for student deferment, however, upon your instructions registrant's induction can be postponed until the end of his current semester (December 14, 1972).

It is requested that you advise this local board of what action should be taken relative to registrant's request for deferment. Since registrant is scheduled to report for induction on October 11, 1972 your prompt reply is appreciated.

By direction:  
Local Board No. 88

*Ira L. Cowans*  
(Mrs.) Ira L. Cowans  
Executive Secretary

cc: Mr. Stillman  
Legal Advisor

TO: LB # 28  
 FROM: AFMS, Buffalo, New York  
 SUBJECT: O'BROCKA, DAVID W.

1a  
 Violator  
 3/2  
 DATE: 24 OCT 1972

ISS # 30-88-50-3093  
 21 OCT 1972

THE ABOVE REFERRED TO SELECTIVE SERVICE REGISTRANT HAS FAILED TO REPORT TO  
 THIS STATION BY 11 OCT 1972 AS DIRECTED BY THE LOCAL BOARD, BUFFALO, N.Y.

October 27, 1972

Honorable John T. Alfvin  
 United States Attorney  
 502 U.S. Court House  
 Buffalo, NY 14202

ATTN: Mr. Arcara

SUBJECT: O'BROCKA, David W.  
 SS. NO.: 30-88-50-3093  
 R.S.N. : (79)143

Dear Sir:

As per your letter of September 8, 1972, the above named registrant was rescheduled to report for induction on October 11, 1972. Be advised that registrant's medical records have been returned to this office indicating that he failed to report.

Your attention in this matter is appreciated.

By direction:  
 Local Board No. 88

*Ira Cowans*

(Mrs.) Ira L. Cowans  
 Executive Secretary

cc:

Mr. Stillman  
 Legal Advisor



## United States Department of Justice

ADDRESS REPLY TO  
UNITED STATES ATTORNEY  
ATTENTION OF  
ASSISTANT ATTORNEY GENERAL  
R. J. Arcara

UNITED STATES ATTORNEY  
WESTERN DISTRICT OF NEW YORK  
UNITED STATES COURT HOUSE  
BUFFALO, NEW YORK 14202  
October 26, 1972

RJA:gw  
72-0785 Cr.

Local Board No. 88  
Selective Service System  
16 Federal Building  
111 W. Huron Street  
Buffalo, New York 14202

Re: O'Brocta, David W.  
SSNo.: 30-88-50-3093

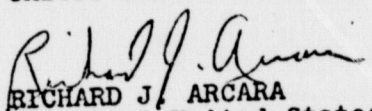
Gentlemen:

This will confirm my telephone conversation earlier this month with Executive Secretary, Sharon Seeger, wherein it was discussed that the registrant's induction be postponed until the end of his current semester in December of this year. As stated to Miss Seeger, the registrant's father came to this office and convinced me that his son had been confused relative to his obligations and responsibilities with his draft board. The registrant's father assured me that it was not the intention of his son to violate the Selective Service law and requested that his son be ordered for induction upon completion of his current semester.

Accordingly, we request that registrant's induction be postponed until the end of the current semester.

Very truly yours,

JOHN T. ELFVIN  
United States Attorney

By:   
RICHARD J. ARCARA  
Assistant United States Attorney

## SELECTIVE SERVICE SYSTEM

Local Board No. 88  
Federal Bldg., Rm 16  
111 West Huron St.  
Buffalo, N.Y. 14202  
(Local Board Stamp)

December 8, 1972

RECEIVED

DEC 12 12 PM '72

LOCAL BOARD NO. 88-85  
SELECTIVE SERVICE  
BUFFALO, NEW YORK

State Director of Selective Service  
Federal Building 441 Broadway  
Albany, New York 12207

Attention: Operations Section  
Subject: O'BROCTA, DAVID WAYNE  
SS No. 30-88-50-3093  
(70)143

Dear Sir

We are forwarding the Cover Sheet (SSS Form 101) of the above named registrant

- ☐ As requested by State Director (SSR 1606.33)
- ☒ For the State Director's review and advise  
Re as per telephone conversation with Miss Yonkers 12-7-72  
file is being forwarded for review. Refer to letter from  
U.S. Attorney dated 10-27-72
- ☐ For review under LBM 14
- ☐ For transmittal to the appropriate Scientific Advisory  
Committee (OC No. 65)
- ☐ For transmittal to the appropriate appeal board  
(SSR 1626.13). LO 57 mailed
- ☐ For transmittal to the National Selective Service Appeal  
Board on appeal to the President (SSR 1627.5). LO 53 mailed
- ☐ For transmittal to the appropriate state headquarters -  
Class I-W (SSR 1660.31)

Please acknowledge receipt of the enclosed cover sheet by signing and returning the duplicate of this letter.

By Direction  
Local Board No. AA

Ina Cawans  
Executive Secretary

Enc.

Cover Sheet received on 12/11/72 by Ad  
LO - 42 (Revised 10-2-70)





SELECTIVE SERVICE SYSTEM  
NEW YORK STATE HEADQUARTERS  
FEDERAL BUILDING, 441 BROADWAY  
ALBANY 12207

REFER TO FILE:

3-12.14-01

December 14, 1972

Dear Mr. Schaff,

Subject: O'BROCTA, David Wayne, SS No. 30-88-50-3093  
RSN (70) 143

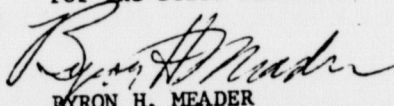
We are returning the file folder of the above named violator.

It is requested that you mail the registrant a letter order to report for induction on December 27, 1972. In the remarks column on the Delivery List, please indicate that "This date authorized by Major Blair."

Please advise the U. S. Attorney, through this headquarters whether the registrant reports for induction.

Sincerely,

For The State Director

  
BYRON H. MEADER  
LTC, Arty  
Manager, Operations Division

Enclosure

File folder received on 12-18-72 by ra

cc: U. S. Attorney, Western District

Mr. Robert E. Schaff  
Chairman, Local Board No. 88  
121 Ellicott Street  
Buffalo, New York

DEC 19 1972  
RECEIVED  
U.S. ATTORNEY  
WESTERN DISTRICT  
BUFFALO, N.Y.

39

Local Board No. 88  
Federal Bldg., Rm 16  
111 West Huron St.  
Buffalo, N. Y. 14202

December 18, 1972

Mr. David W. O'Brocta  
334 Niagara Falls Blvd.  
Tonawanda, NY 14223

SS.No.: 30-88-50-3093  
R.SN.: (70)143

Dear Sir:

Since your original order to report for Induction is still outstanding, you are hereby directed to present yourself for induction on December 27, 1972, by reporting to Rm. 1607, 111 W. Huron St., Buffalo, New York at 7:30 A.M..

Your cooperation is appreciated.

By direction:  
Local Board No. 88

*Robert E. Schaff*  
{Mr. Robert E. Schaff}  
Chairman



Supreme Court Memorandum.

In the  
SUPREME COURT OF THE UNITED STATES  
October Term, 1973

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No. 73-5054

DONALD ALAN BUSH, Petitioner

v.

UNITED STATES OF AMERICA.

---

ON MOTION FOR LEAVE TO PROCEED IN FORMA  
PAUPERIS AND ON PETITION FOR A WRIT OF CER-  
TIORARI TO THE UNITED STATES COURT OF AP-  
PEALS FOR THE SEVENTH CIRCUIT

---

MEMORANDUM FOR THE UNITED STATES  
IN OPPOSITION

---

Petitioner contends that the Selective Service boards were required to give reasons for the denial of his conscientious objector claim.

After a non-jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of refusing to submit to induction into the armed forces, in violation of 50 U.S.C. App. 462. He was sentenced under the Federal Youth Corrections Act to three years in the custody of the Attorney General (18 U.S.C. 5010). The court of appeals affirmed (Pet. App.).

*Supreme Court Memorandum.*

The evidence showed that petitioner registered with Local Board 311, Cincinnati, Ohio, in September 1964, claiming as the sole ground of deferment that he was a student. He was classified II-S (student deferment). After notifying his board in December 1965 that he had withdrawn from college, petitioner, on January 11, 1966, filed SSS Form No. 150 requesting a conscientious objector deferment. This request was denied and he was classified I-A (available for induction) on January 11, 1966.

Petitioner did not appeal this classification within the time allotted. However, on a current information questionnaire filed on June 29, 1966, petitioner indicated that he had re-entered college, expecting to graduate in December 1968. The local board accordingly classified him I-S(C) (temporary student deferment) until June 12, 1967. On August 8, 1967, he was again classified I-A. He appeared personally before the local board seeking reconsideration of this classification, but the board declined to reverse its decision. Petitioner then appealed to the State Appeal Board, which sustained the local board.

Thereafter, the local board received a new student form from petitioner's school and advised petitioner that he would be reconsidered for a II-S deferment at the May 1968 board meeting. On May 2, 1968, petitioner wrote two letters to the board. The first referred to his application in 1965 for conscientious objector status and stated that he would like to appeal his present classification on the ground that he was a conscientious objector. The second letter requested the board to defer the conscientious objector appeal at that time because he was primarily interested in maintaining his student status. Thereafter, the local board met and classified petitioner II-S until November 1, 1968.



*Supreme Court Memorandum.*

On November 15, 1968, the local board classified petitioner I-A. On December 2, 1968, he wrote that he was appealing his classification because he was a full-time student and stated that, if he graduated in December 1968, he wished to appeal on the ground that he was entitled to a hardship deferment. On December 12, petitioner wrote the board that he would in fact graduate in December 1968 and that his previously requested hardship deferment would not be pursued. He further stated that he wished to appeal the I-A classification based on his alleged conscientious objection; he referred again to the Form 150 which he had filed with the board in 1965.

On January 8, 1969, the board informed petitioner that it had scheduled a personal appearance for him on February 25, 1969. Petitioner responded that he would be unable to attend this meeting personally, but he enclosed a statement outlining his beliefs in order to aid the draft board in determining his draft status. On February 25, the local board, without stating reasons therefor, declined to reclassify petitioner as a conscientious objector; it notified him of his I-A classification by means of Form 110 and accompanying Form 217, which indicated that he had thirty days to appeal the board's decision. Petitioner appealed to the State Appeal Board, which agreed that petitioner was properly classified I-A but again gave no reasons. After further delays not here relevant, petitioner was ordered to report for induction on August 13, 1970. He reported as ordered, but refused induction. This prosecution followed.

1. A divided panel of the court of appeals affirmed petitioner's conviction. The majority determined that, by failing to request an interview with his local board or to appeal to the State Appeal Board upon denial of his conscientious objector claim in 1966, petitioner had failed to exhaust his ad-

*Supreme Court Memorandum.*

ministrative remedies. We think this conclusion does not justify the result reached below. It is true that, had petitioner been inducted in 1966, he would have been barred from asserting the alleged invalidity of his classification as a defense in a criminal prosecution, because of his failure to exhaust his administrative remedies. See *McKart v. United States*, 395 U.S. 185, 198. However, after 1966 he was reclassified several times; he was ultimately classified I-A in November 1968. Since a Selective Service registrant has the right of appeal after every reclassification (32 C.F.R. 1625.13)<sup>1</sup>, petitioner was entitled to reassert his claim for classification as a conscientious objector in 1968. See *United States v. McNeil*, 401 F.2d 527 (C.A. 4), remanded for reconsideration, 395 U.S. 463; *Williams v. Tranbley*, 454 F.2d 1147 (C.A. 10). Thus, his earlier failure to exhaust administrative remedies is not dispositive of his attack on the I-A classification underlying this prosecution.<sup>2</sup>

2. The dissent below, proceeding from the same faulty premise that the relevant classification was the unappealed 1966 rejection of petitioner's original conscientious objector claim, concluded that reconsideration of that claim was barred by expiration of the period for appeal, and thus treated petitioner's December 1968 letters as requests for reopening of a final classification on the basis of new information (Pet. App. A-6). Since the local board is not empowered to reopen a classification after expiration of the thirty day appeal period unless it finds that new information has been presented making out a prima facie claim to a dif-

<sup>1</sup> All CFR references herein are to the 1968 edition, which contains the regulations in effect during the period under consideration.

<sup>2</sup> In the cases cited by the court of appeals (Pet. App. A-4), the failure to exhaust related to the classification that led to the registrant's induction order.



*Supreme Court Memorandum.*

ferent classification (32 C.F.R. 1625.4), the dissent concluded that the board's action in sending petitioner a Form 110 advising him of denial of his claim (which it could properly do in the case of a reopening only if a prima facie claim had been presented) established that he had presented such a claim (at least in the board's view) and was therefore entitled to a statement of reasons for its denial. In the opinion of the dissent, therefore, this case fell within the government's confession of error in *Joseph v. United States*, 405 U.S. 1006. In that case, although we believed there was no prima facie claim, we conceded that the fact that the board sent the registrant a Form 110 after his request for a reopening must, given the presumption of administrative regularity, indicate that the board found a prima facie claim had been presented. Accordingly, the registrant was entitled to reasons for the denial of his claim (Memorandum for the United States on the Merits in *United States v. Joseph*, No. 70-251, pp. 19-21).<sup>3</sup>

In our view, however, the facts of this case indicate that petitioner's letter of December 12 contained a timely request for a personal appearance and appeal from the board's classification action of November 20 (32 C.F.R. 1625.13, 1624.1, 1626.2). Such an appearance was accordingly scheduled for February 25, 1969. The regulations provide that, following his appearance, the board must either reclassify the registrant or decide not to reopen his classification. In either case, it must send him a new Form 110, notifying him of its action and of his appeal rights. In

---

<sup>3</sup> In our memorandum in *Joseph*, we indicated that there could be circumstances in which the presumption of administrative regularity would be rebutted. *Ford v. United States*, petition for certiorari pending, No. 72-6858, is such a case. There, the absence of a prima facie claim is so clear that, despite the sending of a Form 110, the board could not have intended to reopen. We are providing petitioner's counsel with copies of our memoranda in *Joseph* and *Ford*.

*Supreme Court Memorandum.*

these special circumstances, the fact that the Form 110 was sent raises no inference that the board reopened the classification. There is, therefore, no indication that the board considered that a prima facie claim had been presented, and the courts are free to consider that question without the presumption involved in the *Joseph* case.

We recognize that 32 C.F.R. 1624.2(a) and 1624.2(b) refer specifically to personal appearances before the board, and that petitioner decided not to appear personally at the time scheduled, but submitted a written statement instead. It is thus conceivable that the board either had no power to proceed under Section 1624.2,<sup>4</sup> or that petitioner abandoned his right to reconsideration by the local board, and instead should be considered to have requested a re-opening on the basis of changed circumstances, under Section 1625.2. We do not believe, however, that it is consistent with the regulatory scheme of Parts 1624, 1625, and 1626 to read Section 1624.2(d) so narrowly as to permit a registrant to seek local board reconsideration of a classification only when he appears personally. Nor do we believe that it is reasonable, in these circumstances, to conclude that petitioner intended to abandon a right (of reconsideration of his claim by the local board) to which he was entitled.<sup>5</sup>

Therefore, we believe the board properly treated petitioner's letter explaining his views as his appearance, determined that no change in his classification was appropriate, and decided

---

<sup>4</sup> We note that 1624.2(d) requires the board to mail a Form 110 "[a]fter the registrant has appeared before the \* \* \* board". There is thus no specific indication in that subsection that the appearance must be in person.

<sup>5</sup> It is significant in this connection that petitioner has consistently maintained that his conscientious objector claim is the same one he initially raised in 1966; he has never alleged that reopening was warranted because of a change in his views.



*Supreme Court Memorandum.*

not to reopen his classification (32 C.F.R. 1624.2c). They thereupon sent him a Form 110, as required by Section 1624.2(d). Under this view of the case, the sending of that form raises no presumption that the board re-opened because it found a prima facie claim had been asserted.

It remains simply to evaluate petitioner's claim to determine whether in fact it was sufficient. It is clear that it was not. Petitioner's statement in support of his conscientious objector claim revealed that he relied upon a merely personal moral code, based upon essentially philosophical views (see 50 U.S.C. App. 456(j)). These views are not the sort which were considered equivalent to orthodox religious views in *United States v. Seeger*, 380 U.S. 163, and *Welsh v. United States*, 398 U.S. 333.

Since petitioner presented no prima facie claim, neither the local board nor the State Board was required to provide a statement of reasons for the denial of his claim (see cases cited in our memorandum in *Joseph*, pp. 12-14).

We thus conclude that the court of appeals reached the correct result in this case, although for the wrong reasons. In the circumstances, there is no occasion for further review. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ROBERT H. BORK,  
*Solicitor General.*

OCTOBER 1973.

